

RECEIVED IN THE UNITED STATES TAX COURT
3/19/26

In the Matter of:)
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)
RIDDLE AGGREGATES, LLC, ORNSTEIN-) Docket No. 31104-21
SCHULER, LLC, TAX MATTERS)
PARTNER,)
)
Petitioners,)
)
v.)
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

Volume: 3
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Place: Atlanta, Georgia
Date: March 18, 2026



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C O N T E N T S

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
FOR THE RESPONDENT:					
Leslie Sellers	543				531 545
Shannon Rentz	635	640	693	705	619 624
James Freeman, II	686	692			
Brian Groff	726				709, 716 731, 748



E X H I B I T S

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EXHIBITS:

IDENTIFIED

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9001-R

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9002-R

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9005-R

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9006-R

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P R O C E E D I N G S

(9:04 a.m.)

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THE CLERK: All rise.

THE COURT: Please be seated.

You may proceed.

MR. PAVILONIS: Good morning, Your Honor.

Christopher Pavilonis for Respondent.

Respondent calls Leslie Sellers.

LESLIE SELLERS

having been duly sworn, testified as follows:

THE CLERK: Please state your name for the record.

THE WITNESS: Leslie Sellers.

THE CLERK: Thank you.

VOIR DIRE

BY MR. PAVILONIS:

Q Mr. Sellers, what is your occupation?

A I'm a real estate appraiser.

Q And do you hold any real estate-related designations or certifications?

A I'm certified as a general certified appraiser in the state that this case is in. I'm also designated as MAI appraiser to the Appraisal Institute, in addition to that, the SRA designation with the same Appraisal Institute, and the AI-GRS designation from the Appraisal



1 Institute.

2 Q So Mr. Sellers, you mentioned three designations
3 to MAI, SRA, AI-GRS. Can you just explain to the Court
4 briefly what each of these means, and what they qualify
5 you to do?

6 A Yes. They're all voluntary designations, from
7 peer-related. And they all begin at the state-certified
8 level. That's the starting point. In order to achieve
9 these, you take additional education, successfully pass
10 the exams. You have peer review of your work product.
11 And you also have tests involved, comprehensive exam that,
12 in the case of MAI is a two-day four-part exam. And your
13 work product is reviewed by your peers.

14 Q And where are you currently employed?

15 A Sellers Realty, LLC, in Clinton, Tennessee.

16 Q And what are your duties and responsibilities at
17 Sellers Realty?

18 A I am the manager of the entity. And I'm a real
19 estate appraiser.

20 Q And what is your formal education?

21 A I have a bachelor's degree in real estate and
22 urban development major from University of Tennessee at
23 Knoxville. And I have successfully achieved all of the
24 education requirements for the MAI, the SRA, and the AI-
25 GRS designations.



1 Q Have you taken any continuing education courses
2 since you earned your degrees?

3 A Yes. I regularly take continuing education.
4 I'm required by the state to have 28 hours every two
5 years. In addition to that, the MAI and the other
6 designations from the Appraisal Institute require
7 additional continuing education. And some of it is
8 specialized.

9 Q Have you taken any courses specifically related
10 to the valuation of conservation easements?

11 A Yes. I have had the conservation easement
12 valuation course from the Appraisal Institute. I took it
13 as a instructor. I'm one of the faculty of the Appraisal
14 Institute. And the instructors that take it have to pay
15 the higher grade than the normal student does.

16 Q Okay. And do those courses involve the
17 application of USPAP?

18 A Say again.

19 Q Do those courses you have taken involve the
20 application of USPAP, the Uniform Standards of
21 Professional Appraisal Practice?

22 A Yes. I had the original course. Plus every two
23 years, you have to have an update for USPAP. The updates
24 don't have a test. But you have to sit through the
25 update.



1 Q Okay. And have you held any leadership
2 positions within the Appraisal Institute?

3 A Yes. I was a Tennessee chapter president. I
4 was twice chair of the Southeast Region IX for the
5 Appraisal Institute, which included duties serving on the
6 board of directors. Then, I was elected as an officer.
7 And I served four years as an officer in the National
8 Association, ending with president in 2010. I have twice
9 served as the chair of the Body of Knowledge Committee.
10 And I have once served as the chair of the Professional
11 Standards and Guidance Committee. That committee has
12 responsibilities to advise the appraisal foundation on
13 possible changes to USPAP.

14 Q And have you helped author treatises on
15 valuation?

16 A Yes. I have.

17 Q Can you just briefly give Your Court -- give the
18 Court your role?

19 A I regularly write articles for The Professional
20 (sic) Journal, for Valuation Magazine. I have written
21 education courses, seminars. I regularly review books,
22 contribute to various books for the Appraisal Institute.
23 The two that would most apply in this situation is, I was
24 one of about 48 that contributed to the 14th edition of
25 The Appraisal of Real Estate textbook. I was given

1 special recognition in that textbook for one of three
2 people that authored chapter 34, which was about
3 intangible valuation and separation of personal property
4 and intangible business interest from a going concern.
5 That was a new concept that we were adding into the
6 textbook at that time.

7 In the 15th edition, I was also one of about 48
8 that contributed to the textbook. And I was given special
9 recognition for one of three people that were reviewed the
10 entire manuscript.

11 Q Have you received any awards from the Appraisal
12 Institute?

13 A I have. My chapter has given me two awards.
14 And I've had two president's awards and the Kinnard Award,
15 which was given at the national meeting for contributions
16 to the education process of the profession.

17 Q Have you appraised conservation easements
18 before?

19 A I have.

20 Q And have you reviewed the appraisals of other
21 appraisers?

22 A Yes.

23 Q Can you just explain to the Court your
24 experience reviewing the appraisals of other appraisers?

25 A The legal profession calls it a rebuttal report.

1 In our profession, we call it a review. And USPAP,
2 several years ago added two standards, Standards 3 and 4.
3 Standards 1 and 2 are; 1 is how you do your work as an
4 appraiser, and 2 is how you write your report as an
5 appraiser. Standard 3 was added for review. It's what
6 you do when you do a review. And Standard 4 is how you
7 write your reports as a review. At that time, the
8 Appraisal Institute got involved in education for a review
9 process, and developed education about specifically doing
10 reviews. And when they did that, I got involved as a
11 instructor. And I teach those courses to appraisers about
12 how to do it. We look at it as a different discipline.

13 Q Okay. And over the past 20 years, can you just
14 give the Court an idea at a high level about how many
15 appraisals you've done, an estimate?

16 A In how long?

17 Q At a high level. Just, you don't have to be
18 specific, just --

19 A I've been appraising since, full time since 1976
20 when I graduated from college. And I guess, I'd say that
21 I have to say thousands in that time period.

22 Q And did you actually view the subject property
23 in this case?

24 A I did.

25 Q Okay. Have you been recognized as an expert in

1 Federal court before?

2 A Yes.

3 Q And you've been recognized as an expert in Tax
4 Court before?

5 A Yes.

6 Q There's one additional question I want to ask,
7 just to take one step back. Do you have any professional
8 experience dealing with core drilling as part of a real
9 estate project?

10 A Yes. I am also -- I have another company that I
11 own. It's called Sellers Land & Development. And as a
12 part of that, I have both developed for myself and my
13 partner, who's my mother, as well as for a fee for other
14 people. And part of those have involved core drilling,
15 and hiring core drilling, working with engineers on the
16 projects.

17 Q Thank you, Mr. Sellers.

18 MR. PAVILONIS: Your Honor, Respondent offers
19 Mr. Sellers as an expert in real estate property
20 valuation, conservation easements, appraisal review, and
21 real estate valuation methods and techniques.

22 MR. ROSEN: Well, first, good morning, Your
23 Honor. Daniel Rosen, for the Petitioner, stating my
24 appearance at joining today.

25 We have no problem with recognizing Mr. Sellers



1 as an expert in real property appraisal in Alabama, which
2 is the recognition that was given to Mr. Catlett, who Mr.
3 Sellers is rebutting, at least in part, also Mr. Shea.
4 The proffer by Respondent, beyond the appraisal of real
5 estate, all those other elements that were mentioned are
6 some elements of being an expert in the appraisal of real
7 estate. If you're an expert in the appraisal of real
8 estate, you need to have expertise in appraisal review and
9 professional appraisal standards. So we would object to
10 the broader qualification, but have no objection to
11 recognizing Mr. Sellers as an expert in real property
12 appraisal.

13 MR. PAVILONIS: Your Honor, if I may respond?

14 THE COURT: Yes.

15 MR. PAVILONIS: Mr. Sellers did testify that
16 appraisal review is a separate category from real estate
17 appraisal valuation. And yes, conservation easements is a
18 subset of real property valuation. And if the Court wants
19 to treat it as such, assuming Mr. Sellers is qualified as
20 a real estate appraiser, that that would subsume
21 conservation easements. We would accept that. And Mr.
22 Sellers proffers real estate valuation methods and
23 techniques. If the Court is also assuming that is, it's
24 subsumed within the definition of real estate appraisal or
25 appraiser, we would accept that. But we do think

1 appraisal review is a separate category. Mr. Sellers
2 testified he has experience and training in that category,
3 and should be recognized separately in that category.

4 THE COURT: Do you have any response for me?

5 MR. ROSEN: Yes. Again, appraisal practice
6 would include the preparation of appraisal reviews.
7 Review of the Appraisal Institute's Appraisal of Real
8 Estate makes it clear that appraisal review is stock and
9 trade practice of every real estate appraiser. So I don't
10 view that as any special area of expertise, nor do I think
11 that Mr. Sellers has demonstrated in particular expertise
12 in the area of appraisal review above and beyond what
13 anyone who would be qualified as an expert in the
14 appraisal of real estate would have.

15 THE COURT: Mr. Pavilonis, do you want to
16 respond to that he has anything above and beyond?

17 MR. PAVILONIS: Yeah. Well, that'll be an
18 additional voir dire, Your Honor.

19 BY MR. PAVILONIS:

20 Q Mr. Sellers, you testified a little bit earlier
21 that appraisal review is separate from valuation. Could
22 you just expand on that? How your experience in appraisal
23 review is above and beyond what a regular real estate
24 appraiser would do?

25 A Yes. If you're licensed in a state, you're able



1 to do both appraisals and appraisal review. However, the
2 voluntary designation, the AI-GRS, is one of two that
3 developed both courses with testing, peer review, and
4 ultimate designation specific to understanding the unique
5 parts of that discipline. One of them is for the
6 commercial general-type of review, which is the one I
7 have, the AI-GRS. They have another one that is specific
8 to just residential. And it's AI-RRS.

9 MR. PAVILONIS: So Your Honor, Respondent would
10 respond that Mr. Sellers carries a separate designation
11 specific to this characterization of appraisal review, and
12 therefore should be recognized above and beyond just real
13 estate appraisal.

14 MR. ROSEN: I will note, Your Honor, that Mr.
15 Catlett had the exact same GRS designation as Mr. Sellers.
16 I think that Respondent's broader proffer is really just
17 trying to bolster perceived credibility of this expert.
18 It's not a separate area of expertise. And if it was
19 subsumed within Mr. Catlett's expertise, it would be
20 identical designation. I don't think in Petitioner's
21 view, the Court should confuse the record by recognizing
22 appraisal experts in subspecialties that are necessarily
23 subsumed within by this designation.

24 MR. PAVILONIS: Very briefly respond, Your
25 Honor?

1 THE COURT: Well, at first, I think you had a
2 question to the witness before Mr. Rosen --

3 MR. ROSEN: I apologize.

4 THE COURT: -- objected. And I have forgotten
5 what the -- completely what the question is. So if you
6 could -- Mr. Pavilonis, if you could ask the witness that
7 question again.

8 MR. PAVILONIS: Sure.

9 BY MR. PAVILONIS:

10 Q Mr. Sellers, can you please explain how your
11 background, your experience, credentials makes you
12 qualified to do appraisal review above and beyond just
13 what a normal appraiser who has a state certification to
14 appraise real estate could do?

15 A It speaks to the designation that I have and the
16 additional education and testing and peer review that I
17 have to achieve that designation. It is, again, a
18 specific discipline. USPAP has business valuation
19 standards, personal property standards, real estate
20 standards, and real estate review standards. So it is a
21 completely separate discipline the way it's looked at
22 within the profession. And the education, peer review,
23 and testing that I have is specific to that discipline.

24 MR. PAVILONIS: And Your Honor, just to respond
25 to Mr. Rosen's comments that Mr. Catlett had a similar



1 designation. They didn't offer him as an expert in peer
2 review -- I'm sorry, appraisal review. So it's a moot
3 point that he had the designation that this expert is
4 being offered, and that has clear experience and a
5 credential to show that he's gone above and beyond just
6 regular certified appraiser status.

7 MR. ROSEN: And may I respond, Your Honor?

8 THE COURT: Yes. And then --

9 MR. ROSEN: I would note that that was pursuant
10 to the stipulation of the parties that that was the
11 qualification, Your Honor.

12 MR. PAVILONIS: There was no such stipulation,
13 Your Honor. There was no such stipulation.

14 MR. ROSEN: I don't want to make counsel
15 witnesses, either of us. So I'm representing to you that
16 this was an agreed-upon stipulation. I think it just
17 needlessly complicates the record to take some elements of
18 appraisal practice, and proffer them with some additional
19 areas of expertise. Appraisal review is normal stock and
20 trade in the practice of appraisal in real property.

21 THE COURT: The witness is certified in real
22 property appraisal in Alabama. And the Court recognizes
23 that it includes other things. And from his background,
24 and what can be the testimony, you can understand the
25 experience he has in appraisal review.



1 MR. ROSEN: Thank you, Your Honor.

2 MR. PAVILONIS: Thank you.

3 DIRECT EXAMINATION

4 BY MR. PAVILONIS:

5 Q All right. Mr. Sellers, were you hired by
6 Respondent to prepare a rebuttal, or prepare a rebuttal
7 reports to the expert reports of Kyle Catlett and Barry
8 Shea?

9 A I was.

10 MR. PAVILONIS: Okay. Your Honor, may I
11 approach the witness?

12 THE COURT: Yes.

13 MR. PAVILONIS: Your Honor, I've handed the
14 witness what has been marked as Exhibits 9006-R and 9007-
15 R. I'm also going to hand a copy of those same exhibits
16 to Petitioner's counsel.

17 MR. ROSEN: Thank you.

18 MR. PAVILONIS: And two copies to the Court.

19 BY MR. PAVILONIS:

20 Q Mr. Sellers, I have handed you two documents
21 that have been marked for identification as Exhibits 9006-
22 R and 9007-R. Do you recognize these documents?

23 A I do. They're my two rebuttal reports in this
24 case.

25 Q Do these reports contain your analysis on the



1 reports prepared by Kyle Catlett and Barry Shea?

2 A They do.

3 Q And these reports, are they signed by you?

4 A Yes.

5 Q And are the reasons supporting your opinions
6 reflected in your reports, which have been marked as
7 Exhibits 9006-R and 9007-R?

8 A Yes.

9 MR. PAVILONIS: All right. Your Honor,
10 Respondent offers what is marked for identification as
11 Exhibits 9006-R and 9007-R into evidence.

12 MR. ROSEN: May I voir dire, Your Honor?

13 THE COURT: Yes.

14 MR. ROSEN: Thank you.

15 (Counsel confer.)

16 MR. ROSEN: Your Honor, may we ask the clerk to
17 switch presentation over to Petitioner? Thank you.

18 THE COURT: Yes.

19 MR. ROSEN: Thank you. And just for the Court's
20 benefit, I have a fairly lengthy voir dire for Mr. Sellers
21 on both of these reports.

22 THE COURT: Okay.

23 MR. ROSEN: To the extent that the reports get
24 admitted, that will obviously just carve-out of my cross.
25 I have no intention of covering the same ground twice.



1 But the voir dire is going strictly to the admissibility
2 of these reports, not to their credibility.

3 MR. PAVILONIS: As long as the questions are
4 about the authorship and the admissibility that doesn't
5 get into the underlying substance within the scope of voir
6 dire, Your Honor.

7 THE COURT: I mean, you may make objections when
8 it's appropriate.

9 MR. PAVILONIS: Yes.

10 MR. ROSEN: Thank you, Your Honor. May I
11 proceed?

12 THE COURT: Yes.

13 MR. ROSEN: Thank you.

14 VOIR DIRE

15 BY MR. ROSEN:

16 Q Good morning, Mr. Sellers.

17 A Good morning.

18 Q This is now, I think, our third time together in
19 these respective positions. I'm going to ask you about
20 the preparation of your reports, your rebuttal to Mr.
21 Catlett's report, which is Exhibit 9006-R, and your
22 rebuttal to Mr. Shea's report, which is Exhibit 907 --
23 9007-R. Excuse me. And I believe you have copies of
24 those in front of you?

25 A Yes.



1 Q And we'll use the projection as appropriate to
2 ask you questions. My questions may be about one of the
3 specific reports, that being Exhibit 9006-R or 9007-R, or
4 my questions may be general to both reports. I'm going to
5 try to remember to be specific, or to be general in my
6 questioning. So feel free, if you're not sure which
7 report we're talking about, or we're talking about both,
8 feel free to let me know. Is that okay?

9 A Yes.

10 Q Okay. So I want to talk generally about these
11 reports. Mr. Sellers, these reports were lodged with the
12 Tax Court in late January of this year; is that right?

13 A I don't remember.

14 Q Feel free to -- I'll represent to you that they
15 were. It's not in dispute. Can you describe the steps
16 that you took before signing the reports and delivering
17 them to Respondent's counsel to make sure that the reports
18 were correct and complete?

19 A I'm not sure I understand. I mean, I read the
20 reports. I reviewed them. I have since reread them
21 again, and produced a errata page for each one, which I
22 intend to handle with the Court before we get here. I
23 have found over the years that no matter how many times I
24 read a report, I always find something else. I found
25 something else since I had the errata sheet prepared.

1 It's minor. But it is something that I would rather not
2 be in the report.

3 Q I guess, I'll be a little more specific. What
4 type of quality control did you engage in to make sure
5 that references and citations in your reports were
6 accurate and complete before signing your reports and
7 giving them to counsel for Respondent?

8 A Well, most of this, the erratas that I have are
9 related to the citations. And those were reviewed again.
10 And as, again, I prepared the errata sheet for that.

11 Q Before you signed the report, did you engage in
12 any effort to make sure that the citations in your reports
13 were correct and complete?

14 A Other than reading the report, I have a
15 colleague, my son, that works with me. I have him read it
16 to see if he has any issues as well, makes me aware of
17 anything.

18 Q Did he make you aware of anything before you
19 signed the reports, but after the reports were complete
20 regarding citations?

21 A I don't know. I can't recall exactly what those
22 conversations were. But it's a standard process in our
23 office.

24 Q Did you maintain drafts of your report?

25 A Generally, the way I work is through a Word



1 document. And it's developed and changed and developed
2 and changed and developed and changed as we move along.

3 Q So in working with your son on the reports --
4 and by working on it, I'm speaking generally in terms of
5 the process of getting the reports to completion. How do
6 you share the draft and the report with your son? Do you
7 email it, or is it on a shared drive? I'm just trying to
8 understand. Is it on the cloud?

9 A Sometimes -- we do have a shared drive.
10 Sometimes it's, he reads it through that. Sometimes he
11 prints it off and takes it home and reads it. It varies.

12 Q And without getting into the specifics of any
13 communications with Respondent's counsel, what is the
14 process that you followed in preparing your report to get
15 review from Respondent's counsel? Did you use email to
16 share drafts of your reports?

17 A Oh. When I am sending my work product to the
18 Office of Chief Counsel, they use a portal called Kite.

19 Q Right. So you upload. I think it's Kiteworks.
20 Yeah. I know what you're talking about. So that's a
21 file-sharing platform, where you would upload a document,
22 so that Respondent's counsel could get that document
23 securely, correct?

24 A Yes.

25 Q And Respondent's counsel would share documents



1 back with you through that same portal; is that correct?

2 A Yes.

3 MR. ROSEN: Okay. If we could bring up PDF page
4 8 of Exhibit 9006-R.

5 MR. PAVILONIS: Just for clarification, the
6 witness' copy in front of him doesn't have PDF page
7 numbers, so if you --

8 MR. ROSEN: I'll reference both --

9 MR. PAVILONIS: Yeah. Appreciate it.

10 MR. ROSEN: -- for the -- so this is page 6 of
11 the report, but it's PDF page 8, and if you could just
12 zoom in on the portion at the bottom that says, "Appraisal
13 review assistance"?

14 BY MR. ROSEN:

15 Q If you could just take a moment and read that to
16 yourself and let me know when you've done so?

17 A Yes.

18 Q So Benjamin Sellers is your son, correct?

19 A Yes.

20 Q And you say that Mr. Sellers assisted you with
21 the research. What particular research did Mr. Sellers
22 assist you with in connection? And again, we're looking
23 at Exhibit 9006-R, which is the Catlett rebuttal, but my
24 question also extends to 9007-R, which is the Shea
25 rebuttal. I'll represent to you, you have the same

1 statement in both reports. So what exactly, across the
2 reports, did Mr. -- I'm not going say Mr. Sellers to
3 confuse the record, I will say Benjamin Sellers; what
4 research did he assist you with?

5 A Well, with regard to the Catlett report, we did
6 research for data, looking at deeds, maps, all kinds of
7 things about the subject property before we did the
8 property inspection. I will admit that Ben is younger,
9 and he is probably a little bit more advanced than I am in
10 technological. We do some digitization within my
11 proprietary mapping system that we have. He also looks up
12 deeds. We have access to deeds in the state or the
13 counties by subscription. And then other than that, if I
14 ask for some specifics, for instance, find me this, find
15 me that, he will do that research for me.

16 Q Do you recall any specifics in connection with
17 either your report, your rebuttal report of Ms. Catlett
18 and your rebuttal report of Mr. Shea when you asked him to
19 do those things?

20 A I asked him to take the mine plan that Mr. Gold
21 had produced that was in Mr. Catlett's report and digitize
22 it and put it on our mapping program and then overlay the
23 flood zones and the wetlands over that area so that I
24 could see how they related to each other. And also I
25 wanted to mark the two core drilling holes. I do recall

1 asking him to do that.

2 Q And I think -- it's okay if I use Ben, just for
3 the record we're talking about Benjamin Sellers. Was Ben
4 responsible for actually drafting any of the contents of
5 either of these reports?

6 A No. He did prepare some tables for me to look
7 at, at my direction, but he doesn't do anything other than
8 what is under my direction.

9 Q So you are the sole author of your reports; is
10 that correct?

11 A Yes.

12 Q Okay. General questions. Mr. Sellers, when you
13 were talking about your son earlier, I may be
14 paraphrasing, I think you said that he's a -- is it fair
15 to say that he's more computer savvy than you are?

16 A In some parts of it, I'm actually better in some
17 areas than he is.

18 Q And what would those be?

19 A I'm probably better in parts of Excel and parts
20 of Word than he is.

21 Q Are you familiar with artificial intelligence,
22 chatbots?

23 A Chatbox?

24 Q Chatbots, or AI. I'll use AI, not for the
25 Appraisal Institute now, but for artificial intelligence?

1 A Yes.

2 Q Are you familiar with some of the tools that are
3 available, the artificial intelligence tools from Google
4 or Microsoft, like Copilot or ChatGPT?

5 A Yes.

6 Q And just generally, not necessarily with respect
7 to any of your appraisal practice, have you used any of
8 those artificial intelligence tools?

9 A Yes. I regularly use Grammarly. I've used it
10 for years.

11 Q Have you used ChatGPT?

12 A I've used ChatGPT, and I've used Gemini, I
13 think.

14 Q You used Gemini. Do you have a paid account for
15 any of these, or it's just the free accounts?

16 MR. PAVILONIS: I'm going to object. If there's
17 a specific question about this related to the reports.

18 MR. ROSEN: I'm tying it in, Your Honor.

19 THE COURT: I'm going to allow it, because I
20 think he's laying the foundation.

21 MR. PAVILONIS: Okay.

22 MR. ROSEN: Thank you, Your Honor.

23 BY MR. ROSEN:

24 Q I'll ask again. Can you describe generally your
25 use of artificial intelligence in connection with your

1 appraisal practice?

2 A Well, as I used Google before artificial
3 intelligence came in, I would Google and find me the
4 zoning requirements for Pickens County, Georgia, or
5 something of that nature. And I have found that Gemini
6 and Chat, in particular, are better at finding those
7 things than what Google used to do. So I use those, in
8 particular, for that. I use Grammarly regularly. I have
9 attempted to be a very good grammar writer for near 50
10 years now, and I find that I am not what I want to be. So
11 I've used Grammarly for several years.

12 I usually have it give me ideas about the
13 structure of sentences and things that I write. I do
14 type. I type pretty fast for a two-finger typer. I have
15 for years, but I tend to dictate and then go back and
16 tweak it, and then use Grammarly to give me ideas about
17 restructuring of sentences, or a paragraph to make it more
18 readable. I tend to get a little bit wordy.

19 Q Other than Grammarly, did you use any artificial
20 intelligence tools in connection with your preparation of
21 your rebuttal to Mr. Catlett and/or Mr. Shea?

22 A You mean about Gemini or Chat?

23 Q Yes, sir.

24 A I don't recall specifically. I may have, but I
25 don't recall. I'll typically ask it questions, the same

1 as I would with Google.

2 Q Now, you're familiar -- or are you familiar with
3 the difference between open systems and closed systems
4 when we're talking about artificial intelligence?

5 A Generally.

6 Q And what's your understanding of the difference?

7 A When you have the -- I think there's one is
8 called Notebook that is supposedly a closed system, and
9 you can train it to do things that you want it to do, and
10 use only the sources that you want to use.

11 Q Just to confirm we're on the same page. So a
12 closed system would only be looking at data, or have data
13 available to it that you're pointing it to, as opposed to
14 an open system where artificial intelligence may be
15 learning from your queries, like Gemini or ChatGPT?

16 A I'll take your word for it.

17 Q Okay. It's fine. Okay. Do you have accounts
18 with Gemini or ChatGPT, paid accounts?

19 A Yes. Yes.

20 Q And are you aware as to whether or not search
21 histories in either Gemini or ChatGPT, or both, are
22 maintained as part of your subscription, if you wanted to
23 go back and look at what you searched for?

24 A I am aware that it has a list of chats, they
25 call them, where I have asked it to find me something,

1 that's the way I understand it.

2 Q Are you familiar with what has been described as
3 artificial intelligence hallucinations?

4 A What's that last word?

5 Q Artificial intelligence hallucinations, have you
6 ever heard that before?

7 A No.

8 Q Have you heard stories about artificial
9 intelligence sending back cases or citations that don't
10 exist, have you heard anything about that?

11 A No.

12 Q And that's what I meant by hallucinations.

13 A I misunderstood you; hallucinations, yes, I've
14 heard of that.

15 Q Have you had any experience in using artificial
16 intelligence in your real estate practice where what was
17 returned to you by AI was in fact a hallucination?

18 A Not that I can recall.

19 MR. ROSEN: I'd like to bring up page 15 of
20 Exhibit 9006-R, and I think that's not PDF 15, but page 15
21 the report. Yes. Perfect. If you could just zoom in on
22 the bottom half of the page -- I'm sorry -- the top half.
23 My apologies, Ms. Orona. Starting from "my review,
24 analysis, and support". Yeah. A little bit lower. Right
25 there. Perfect.

1 BY MR. ROSEN:

2 Q And I don't have a question about the substance
3 of what's in this report right now, but I have a question
4 about the way that you've styled this report. And I'm
5 looking at the paragraph that begins, "In fact", and ends
6 with "appraisal" in footnote 33. If I were to call that a
7 block quote, would you understand what I mean?

8 A Yes.

9 Q Okay. Right. So am I correct that your
10 indentation of language in your report like that is to
11 indicate a direct quote from whatever the source is?

12 A It could be a direct quote, or it could be
13 something I'm referring to from the quote that I that I
14 cite at the bottom.

15 Q I'm sorry. I don't understand. So just looking
16 at this paragraph here, in making this paragraph a block
17 quote, this particular one, were you conveying to the
18 reader that this was a verbatim quote from whatever
19 footnote 33 is, and Ms. Orona can bring that up on the
20 bottom if we need to see it. Maybe put them side by side
21 if that'll help Mr. Sellers. Yeah. It's fine. Yeah.

22 BY MR. ROSEN:

23 Q So we have a citation here to Appraisal of Real
24 Estate, 15th Edition, page 357. So with respect to this
25 paragraph here, by making it a block quote, were you

1 representing to the reader that this was a direct quote
2 from page 357 of the Appraisal of Real Estate?

3 A That was the intent when I wrote it. I will
4 say, based upon your previous questioning, I have had,
5 when I do a Grammarly check, Grammarly doesn't seem to --
6 sometimes I've caught it -- where trying to restructure
7 the wording in a sentence that I didn't intend it to. It
8 takes something I've used as a quote, and that possibly
9 could happen.

10 Q Let me ask you about your use of Grammarly. So
11 when you use Grammarly to check your report, you're
12 essentially uploading the draft of the report into
13 Grammarly so that it can check your grammar?

14 A No. It's on your desktop. It's an add-in to
15 Word, or it's in Excel, and other programs too. It does
16 your email as well. And I'm not sure exactly how it
17 works, but it's got two different functions. One is I can
18 highlight a specific paragraph or sentence, and it will
19 give me suggestions. Or I can say read -- I can tell it
20 to rephrase it, and it will rephrase it. And then in
21 addition to that, you can bring up a document, and it will
22 highlight certain things as you go through document for
23 possible rewording or spelling mistakes, commas, that sort
24 of thing, as you go through it.

25 Q But is it fair to say that in these two reports

1 that we're talking about here, Exhibits 9006-R and 9007-R,
2 when you had a block quote like the one we're looking at
3 right here on the screen, that your intent is to convey to
4 the reader that this is a quotation from the source that
5 you're citing?

6 A When I have a block quote, the intent was that.
7 Yes.

8 Q Thank you. Mr. Sellers, you would agree that
9 accuracy in citations is important in an expert report?

10 A Yes.

11 Q Okay. And you would also agree that a lack of
12 accuracy in citations in an appraisal assignment, whether
13 it's an expert report, an appraisal, or an appraisal
14 review, could undermine the credibility and reliability of
15 that assignment?

16 A Yes.

17 Q Okay. And you submitted these two reports under
18 oath and under the certifications required by the Tax
19 Court rules, right?

20 A Correct.

21 Q Now, I want to talk about the errata sheets for
22 a few minutes. And if we could pull up first Exhibit
23 9008-R, which is the errata sheet for the Mr. Sellers'
24 rebuttal to the Catlett report.

25 MR. ROSEN: I don't know, Ms. Orona, if you can



1 kind of zoom in on the text a little bit. Just get rid of
2 the white, it may make it a little bit bigger for everyone
3 to see. A little bit bigger.

4 BY MR. ROSEN:

5 Q I want to just talk generally about --

6 THE COURT: What exhibit number did you say this
7 was?

8 MR. ROSEN: I'm sorry, Your Honor. This is
9 9008-R. I may have misspoken. This is a stipulated
10 exhibit.

11 THE COURT: Yes.

12 MR. ROSEN: Yes. I was confused too, that the
13 errata has been stipulated, but the reports are obviously
14 still in play.

15 BY MR. ROSEN:

16 Q Mr. Sellers, who prepared this errata sheet?

17 A I did.

18 Q Did Ben Sellers play any role in the preparation
19 of this errata sheet?

20 A I don't recall. I could have asked him to check
21 a specific source. I don't recall. It's been a couple of
22 months.

23 Q Now, this errata sheet, 9008-R, identifies 20
24 errata. Can you see that? Is that typical or common for
25 you in a similar type engagement for preparing an expert



1 report, to have 20 corrections?

2 A What, your question is, is it typical?

3 Q Yeah. Have you had more than 20 errors to be
4 corrected in any expert engagement that you've ever
5 performed prior to your engagement in this particular
6 case?

7 A I don't recall.

8 Q Can you recall how many errors you had in other
9 reports that were prepared and filed here with the Tax
10 Court in prior cases?

11 A I don't recall.

12 Q Do you recall if it was as many as 20 or more?

13 A I don't recall.

14 Q Just generally, again, and these questions apply
15 equally to 9009-R, there are less, I will represent to
16 you, errata meriting correction in your rebuttal to Mr.
17 Shea, but we also have a similar list -- or a list of
18 corrections for that report as well that you prepared.

19 A What is your question?

20 Q My question is whether you prepared a similar
21 errata sheet in connection with your rebuttal to Mr.
22 Shea's report?

23 A I did.

24 Q Okay. And so the errors identified in your
25 errata sheets, Exhibit 9008-R and 9009-R, when did you



1 first identify that there were errors in your report that
2 merited corrections? How soon after -- I'll phrase it
3 differently. How soon after you provided your signed
4 reports to counsel for Respondent to lodge with the Court
5 did you discover that you had errors that needed
6 correction?

7 A I don't recall exactly when it was, but it was
8 after the initial report was lodged and before this was
9 lodged, I was asked by my client to do another review and
10 prepare anything that I saw in the errata, and this is
11 what I prepared.

12 Q Can you recall generally how soon after your
13 reports were lodged with the court? And I'll represent to
14 you that was January 23rd of 2026, that you identified the
15 errors set forth in these errata sheets? Was it a week
16 after, a couple of days, several weeks, a month, generally
17 speaking?

18 A But it wasn't a couple of days. It was more
19 than that.

20 Q Yeah?

21 A Beyond that, I can't specify when it was. I
22 just can't recall. But it was more than a few days.

23 Q Given that you created these errata sheets, I
24 assume that you still have electronic versions of these
25 errata sheets saved on your computer system?

1 A I'm assuming I do. Yes.

2 Q Okay. You would agree that reviewing those
3 electronic files will tell us when they were created,
4 correct, familiar with the concept of metadata?

5 A Yes. It should be dated on my system.

6 Q But sitting here today, you can't tell me when
7 you prepared this?

8 A I mean, other than you said within a few days or
9 a few weeks, I would say that it was not within a few
10 days. It was probably more like a few weeks, but I can't
11 recall specifically.

12 Q Did you identify each and every one of these
13 errors in your report that you say merit correction, or
14 were you informed by someone else that there were errors
15 in your report?

16 A No. I was just told to do a review, and check,
17 and prepare an errata sheet. I found all these errors, or
18 Ben, I asked him to read as well as myself, and see if he
19 can point anything out.

20 Q Do you have an explanation why these errors were
21 not detected before your reports were lodged with the
22 Court as part of your review and finalization of these two
23 expert rebuttal reports?

24 A Well, this is the first time that I've ever done
25 rebuttal reports only in one of these cases.

1 Q Um-hum.

2 A And in this case, it was over the Christmas and
3 New Year's holiday, and I recall working until about 4
4 o'clock on New Year's Eve and Christmas Eve. It was a
5 challenge because I recognize many issues with Mr.
6 Catlett's reports that I wanted to include in the
7 rebuttal, and I wanted to try to include as many as I
8 could. As a result, as I probably -- looking back on it,
9 I probably should have narrowed my scope and only covered
10 a few things versus more things. But I tried to expand
11 the report, and as a result, I was turning in a report
12 that I had not apparently done the details of checking my
13 sources, as these 20 items on his report indicate.

14 Q Again, I'll represent to you the reports, your
15 rebuttal reports to Mr. Catlett and Mr. Shea were
16 submitted to the Court on January 23rd of 2026. Do you
17 recall, generally or specifically, how soon before that
18 you completed those reports and provided them to counsel
19 for Respondent?

20 A I can't recall.

21 Q I'll represent to you, just using 9006-R, which
22 is your rebuttal to Mr. Catlett's report, it's dated
23 January 23rd, 2026. Is that the day that you provided
24 that report to the counsel for Respondent?

25 A I can't recall. I produced it before the



1 deadline. I know I did that, but I can't tell you sitting
2 here today exactly when I did it.

3 Q If you dated it on January 23rd, 2026, could you
4 have actually signed it and transmitted it to counsel for
5 Respondent either before that date? That is, could you
6 have post-dated the document; is that your practice?

7 MR. PAVILONIS: Your Honor, I'm just going to
8 check that this is getting into draft reports, which are
9 not discoverable in Tax Court.

10 MR. ROSEN: I'm not asking about the draft. I'm
11 asking about the final report, when it was signed and
12 provided to Respondent.

13 MR. PAVILONIS: Well, he asked about the copy
14 that is not signed, he's asking about the one he emailed
15 before he signed it.

16 THE COURT: I'm going to allow the question, but
17 I recommend moving on after this --

18 MR. ROSEN: Yes.

19 THE COURT: -- question is answered.

20 MR. ROSEN: Yes, Your Honor.

21 BY MR. ROSEN:

22 Q And maybe my question wasn't clear. Your
23 reports are both dated January 23rd, 2026. Would you have
24 provided those reports signed and dated January 23rd, 2026
25 before January 23rd, 2026? That is, would you have post-



1 dated these documents?

2 A Not that I recall. No.

3 Q Is it your practice to post-date appraisal
4 documents like appraisals and appraisal reviews?

5 MR. PAVILONIS: I'm going to object to
6 relevance. It's supposed to be the admissibility of these
7 reports.

8 THE COURT: And I recommended that --

9 MR. ROSEN: I'll move on, Your Honor.

10 I'd like to -- we have it up on the screen, is
11 this 9008-R? Yes, it is. I'd like to blow up number 17
12 on the errata sheet, if you could blow up entry number 17.

13 BY MR. ROSEN:

14 Q Take a moment to read that, and let me know when
15 you've done so?

16 A Okay.

17 Q Are you familiar with this error --

18 A No.

19 Q -- meriting correction?

20 A Not specifically. Not right since I sit here
21 today.

22 MR. ROSEN: Well, why don't we turn to page 50
23 of your rebuttal to Mr. Catlett's report, which is Exhibit
24 9006-R, it's going to be page 50, or PDF page 52. And if
25 you could blow up the -- it's that block quote that starts



1 "For a deposit to have value"?

2 THE WITNESS: Okay.

3 BY MR. ROSEN:

4 Q Is that the block quote that you were seeking to
5 correct with that errata sheet entry number 17?

6 MR. ROSEN: And if it's easier, and it's
7 difficult for Ms. Orona to have two exhibits up at once, I
8 could approach with a copy of the errata sheet if that
9 makes it easier. I think Ms. Orona is going to do it,
10 though. So it's number 17. You can blow up number 17,
11 which is from the errata sheet, and just blow up the
12 bottom half of the page on Exhibit 9008-R -- I'm sorry.
13 9006-R. You can't do it. Okay.

14 Your Honor, may I approach the witness with a
15 copy of 9008-R? I think it's going to just be easier for
16 him to reference it with a paper copy.

17 THE COURT: Yes.

18 MR. ROSEN: Thank you. Okay. Thank you, Your
19 Honor.

20 BY MR. ROSEN:

21 Q Mr. Sellers, I just handed you a copy of Exhibit
22 9008-R. I'm going to refer you back to what we were
23 looking at a moment ago, which is entry number 17 on 9008-
24 R.

25 MR. ROSEN: Your Honor, would the Court like a



1 paper copy for cross-reference?

2 THE COURT: Sure.

3 MR. ROSEN: Thank you.

4 BY MR. ROSEN:

5 Q So can you tell me, Mr. Sellers, that that item
6 number 17, in Exhibit 9008-R, is that the -- is this the
7 paragraph that you're seeking to correct with this errata
8 sheet, entry number 17?

9 A I believe it is.

10 Q Now, number 17 refers to footnote 135, do you
11 see that?

12 A Yes. But you meant to write 136, right, because
13 that's the footnote that we're looking at here.

14 MR. ROSEN: If we can blow up that paragraph
15 again, Ms. Orona. Okay. It's gigantic.

16 BY MR. ROSEN:

17 Q That's an error in the errata sheet; it should
18 be 136, right?

19 A I'm sorry, I can't hear you.

20 Q I'm sorry. Is that a mistake in your errata
21 sheet when you cite in item 17 to footnote 135, and you
22 meant to refer to 136, correct?

23 A The errata 16 and 17, both relate to 135, and I
24 believe the errata 17 should be 136.

25 Q Thank you.



1 MR. ROSEN: And if you could you draw up the
2 bottom, Ms. Orona, and I do want to focus on this
3 paragraph from the Yellow Book.

4 BY MR. ROSEN:

5 Q So going back to our earlier discussion, this is
6 a block quote, Mr. Sellers, correct, in your report?

7 A It is.

8 Q Okay. And by making it a block quote, you were
9 conveying to the reader that this was a verbatim
10 recitation of what was actually in the Yellow Book,
11 correct?

12 A In the initial part, I was. In the errata
13 sheet, I was trying to explain that that should be a
14 paraphrased text.

15 Q Okay. So when you write on your errata sheet
16 entry number 17, this is paraphrased from the text on
17 those pages, you're referring to this block quote here,
18 right?

19 A I believe so, yes.

20 Q So this is not a verbatim recitation of the
21 Yellow Book in your report, correct? What we're looking
22 at on the screen?

23 A That is the intent of the errata sheet to
24 explain that it's a paraphrase.

25 Q Do you know why this error occurred? How a

1 block quote could actually be a paraphrasing and presented
2 in your report as a block quote?

3 A The only thing I could do is speculate. I don't
4 know.

5 MR. ROSEN: Okay. If we could, let's go to -- I
6 mean, let me -- may I have a moment, Your Honor?

7 THE COURT: Yes.

8 MR. ROSEN: Thank you. I just want to bring
9 back up Exhibit 9006-R -- actually, I'm sorry. Can we go
10 back to 9008-R, where we were in that footnote? I'm
11 sorry, Ms. Orona, we're back to 9008.

12 MS. ORONA: I'm sorry.

13 MR. ROSEN: I'm sorry, 9006. My apologies.
14 There you go. You just blow up the footnotes at the
15 bottom, footnote 135, 136.

16 BY MR. ROSEN:

17 Q So footnote 136 cites to the UASFLA. And if I
18 call that the Yellow Book, you know what I'm talking
19 about, right?

20 A Yes.

21 Q Okay. Now, your report presented footnote 136
22 as a citation to a block quote from Yellow Book section
23 4.4.2.1.1; is that correct?

24 A The original report did?

25 Q Yes.

1 A Yes.

2 Q Mr. Sellers, you consider yourself to be someone
3 who is quite familiar with the Yellow Book; is that fair?

4 A I have had the course and passed the test.

5 Q And you use the Yellow Book in your appraisal
6 practice, right?

7 A I do.

8 Q Okay. But there is no section 4.4.2.1.1 in the
9 Yellow Book, is there?

10 A I don't sit here today and tell you yes or no
11 without the book in front of me.

12 Q Would it refresh your recollection if I gave you
13 a copy of the Yellow Book to take a look at it?

14 A I'd be happy to take a look.

15 MR. ROSEN: May I approach, Your Honor --

16 THE COURT: Yes.

17 MR. ROSEN: -- with a paper copy for him to take
18 a look at it?

19 THE COURT: Yes.

20 MR. ROSEN: Thank you. It's Exhibit 9029-R.

21 BY MR. ROSEN:

22 Q And I'll leave that up on the screen as a
23 reference for you. And I'll help you so you don't have to
24 page through the whole thing. If you go to page 120 of
25 the Yellow Book, that will bring you to section 4.4.2.1.

1 A There is a 4.4.2.1.

2 Q Right. And you would agree that on the
3 following page, it goes to 4.4.2.2, correct?

4 A Following that is, yes, that's 4.4.2.2.

5 Q Okay.

6 MR. ROSEN: If we could bring up -- I don't know
7 if you could do this, Ms. Orona, but if you could bring
8 up -- well, we can look at it here, we're citing to page
9 96 of the Yellow Book. If you could bring up page 96 of
10 the Yellow Book, please, which is Exhibit 9029-R. Let me
11 just blow up the text on the page. I don't know, is it
12 too difficult, Ms. Orona, to also bring up that block
13 quote from 9006-R as a side-by-side? Can you just blow up
14 the block quote. There it is. Just blow it up. Okay.
15 And if you could just blow up the text on the left, if you
16 can also kind of stack them.

17 BY MR. ROSEN:

18 Q So on the top, we have the quote from the
19 report, which is citing to page 96. This is page 96 of
20 the Yellow Book. You could also look at the paper
21 version, Mr. Sellers, which is Exhibit -- oh, got it. It
22 is 9029-R for the record.

23 Mr. Sellers, there's nothing on this page of the
24 Yellow Book, on page 96. The words -- well, let me
25 restate that, the words you used in your report that was

1 presented as a block quote from the Yellow Book don't
2 appear in the Yellow Book; do they?

3 A That's the reason I made the errata sheet to
4 explain so there's no misunderstandings that that was a
5 paraphrase.

6 Q Is it your testimony --

7 A And it changes the page as well.

8 Q Is it your testimony that you knew you were
9 paraphrasing when you presented it as a block quote in
10 your report and you just forgot to say you were
11 paraphrasing, or you only realized that afterwards?

12 A I do, on occasions, paraphrase versus black
13 quote. And then I also have explained to you earlier, I
14 have had a situation in the past where I had Grammarly
15 restructure a paragraph that I didn't intend to.

16 Q So if we go back -- and I know this is getting
17 complicated here, but if we were to look at the errata
18 sheet 9008-R, which I think you have in front of you. Do
19 you have that, sir?

20 A (No audible response.)

21 Q Okay. There's nothing on the pages that you
22 originally cited in your report, and we can pull up that
23 footnote, 136 and 135, there was nothing -- I'm sorry.
24 Let me restate that. When you identified this error in
25 your errata sheet, you couldn't find any supporting

1 information on the pages that you originally cited; is
2 that correct? It was page 96?

3 A That's the purpose of the errata sheet.

4 Q So your errata paraphrases a different section
5 of the Yellow Book to support your original point; is that
6 correct?

7 A Say that again?

8 Q What you're describing as a paraphrasing, in
9 paragraph 17, is actually paraphrasing a different section
10 of the Yellow Book?

11 A Yes.

12 MR. ROSEN: If we could bring back up Exhibit
13 9008-R to clear this off, Ms. Orona, and go to errata
14 number 7, and blow it up, please.

15 BY MR. ROSEN:

16 Q Just take a moment to read that to yourself and
17 refamiliarize yourself with this correction.

18 MR. ROSEN: And Ms. Orona, while Mr. Sellers is
19 looking at that, if you could bring up PDF 21 of Exhibit
20 9006-R, which is going to take us to the three paragraphs
21 referred to in errata line 7. I don't know if it's
22 possible to blow up the portion of the page that goes from
23 46 to 48 in terms of the body and the footnotes? Okay.

24 BY MR. ROSEN:

25 Q So here, you quote what you represent the

1 Yellow -- let me just --

2 MR. ROSEN: Is this PDF 21, Ms. Orona?

3 MS. ORONA: Um-hum.

4 MR. ROSEN: I'm sorry. Just one moment, Your
5 Honor.

6 BY MR. ROSEN:

7 Q I refer you to the top, which is the paragraph
8 that begins, "The use of the income capitalization
9 approach"; if you'd just read that to yourself just
10 through the footnote and let me know when you're done?
11 Now, at the end of that apparent quote, you put footnote
12 citation number 46. You see that down the bottom of the
13 page?

14 A Yes.

15 Q And you attribute that quotation to page 135 of
16 the Yellow Book; you see that?

17 A Not in my errata sheet, but in the original
18 report, yes.

19 Q Right.

20 MR. ROSEN: Well, if we could bring up page 135
21 of Exhibit 9029-R, which is the cited page in the report.
22 If you can blow that up? It's page 135 of the Yellow
23 Book, if you'd just blow the text up there? Thank you.

24 BY MR. ROSEN:

25 Q So just to refresh you, what you cited to on

1 page 19 of your report before the errata was, "The use of
2 the income capitalization approach, e.g. a discount cash
3 flow analysis to value a mineral-bearing lands is
4 discouraged, particularly when the mineral interest is
5 undeveloped". Neither that quote nor that concept appears
6 anywhere on this page, does it?

7 A No. That's the reason for the errata sheet.

8 Q How did this mistake happen?

9 A I can't recall.

10 Q Could it be from the use of AI?

11 A Not that I know of.

12 Q What --

13 A I can speculate, but other than that, I can't.

14 Q You don't recall?

15 A I don't recall.

16 Q Okay.

17 MR. ROSEN: Okay. If we go back to page 19 of
18 Exhibit 9006-R, and I want to go to the next quote that
19 begins, "A DCF analysis"?

20 BY MR. ROSEN:

21 Q Just read that to yourself and let me know when
22 you're done.

23 MR. ROSEN: And if you can bring up the
24 footnote. Thank you, Ms. Orona. If you can now bring up
25 page 137 of the Yellow Book, Exhibit 9029-R. Just block



1 the text.

2 BY MR. ROSEN:

3 Q Now, the block quote that we just looked at, at
4 page 19 of your report, doesn't appear anywhere on this
5 page, does it?

6 A I believe I said that's the reason for the
7 errata sheet.

8 MR. ROSEN: If we go back once again to page 19
9 of Exhibit 9006-R, and I want to blow up the paragraph
10 that says, "The courts have generally been skeptical of
11 the use of the income approach", and if you could get the
12 footnote too, please? And bring back -- I think actually
13 may have it handy, if not, bring back page 137 of the
14 Yellow Book, Exhibit 9029-R.

15 BY MR. ROSEN:

16 Q That quote, once again, doesn't appear anywhere
17 on this page; is that correct?

18 A It does in the errata sheet. It says, "both
19 Federal courts and industrial professionals have
20 criticized valuations of mineral property for just
21 compensation purposes that improperly disregard the sales
22 comparison approach".

23 Q Okay. I was asking, I'm sorry, Mr. Sellers, if
24 I wasn't clear, I'm talking about your report that was
25 lodged with the Court as your direct testimony in this

1 case, at Exhibit 9006-R. And to refresh you again, what
2 was presented as a block quote was, "The courts have
3 generally been skeptical of the use of the income approach
4 to value undeveloped mineral deposits, finding that such
5 an approach is often based on speculation and conjecture".
6 Mr. Sellers, was that the result of an AI summary of this
7 page that was put into your report?

8 A The errata was a result of me rereading the
9 report and checking my quotations, and I --

10 Q Right. I'm talking about the report itself,
11 though. I'm sorry. Before you identified the error and
12 made the correction, what explanation can you give the
13 Court as to why the language that was presented as a
14 direct verbatim quotation from the Yellow Book, appears to
15 address the general tenor or concept of this page, but
16 this language can be found nowhere in the document. Did
17 you paraphrase it, or did AI do it?

18 A I probably dictated it. And again, I can only
19 speculate. As I said, I have had trouble with the
20 paraphrasing issue with Grammarly. And I think maybe, I'm
21 assuming, that that's what happened in this instance, but
22 I don't really know. I can tell you that I did check it.
23 I did find that it was an error, and I wanted to make sure
24 that the Court was provided the errata sheet and the
25 correct information. I prepared that immediately as soon

1 as I saw it.

2 MR. ROSEN: If we could bring back Exhibit 9008-
3 R, please, back at entry number 7 again. It's a long one,
4 so if you could blow that up.

5 BY MR. ROSEN:

6 Q Just take a moment to refresh yourself. Are you
7 finished, Mr. Sellers, or you're still reviewing it?

8 A I'm sorry?

9 Q Are you still reviewing this or you finished?

10 A Yes.

11 Q Who originally discovered this error meriting
12 correction?

13 A I did.

14 Q And how did you go about identifying that it was
15 incorrect? What steps did you take that revealed to you
16 that what you were presenting as a block verbatim quote
17 was actually not?

18 A When I was requested by my client to do a
19 preparation of any errata sheets to review the document
20 and prepare that, my first read was to check, read it
21 through once, straightforward and check for any
22 punctuation issues. The second was to go back and recheck
23 every one of the citations, and that's when I found these.

24 Q You have a fair amount of experience using
25 Grammarly, correct, fair amount?



1 A Uh-huh. I've used it for a few years, yes.

2 Q In your experience using Grammarly, does it ever
3 change citations?

4 A That's one thing I don't like about Grammarly is
5 it doesn't know what to change and what it doesn't. Or if
6 it does, I don't know how to make it do it.

7 Q Did you have any prior experiences prior to
8 using Grammarly for these reports of Grammarly changing
9 citations?

10 A Yes, I have.

11 Q But yet you still relied on Grammarly in
12 preparing your report here.

13 A I still rely on Grammarly, but I use it
14 differently than I used to. I use it now paragraph by
15 paragraph, and I distinctly do not mark anything that's
16 quoted.

17 MR. ROSEN: Let's put aside the errata sheet and
18 turn back to your rebuttal report to Mr. Catlett, which is
19 Exhibit 9006-R. Let's pull up PDF page 32, which is page
20 30 of your report. And I want to blow up the paragraph
21 that begins -- it starts, "UASFLA section 4.4.4.2, page
22 103 states", and then the block quote underneath it.

23 BY MR. ROSEN:

24 Q If you just take a moment to read that to
25 yourself.



1 MR. ROSEN: If we could then go side by side,
2 Ms. Orona, to page 103 of Exhibit 9029-R, the Yellow Book.
3 And if it's possible to blow up the text on the Yellow
4 Book page and the quote that we were just looking at, and
5 stack them or put them side by side so we can compare
6 them. Okay. Well, if you just take a -- put that back
7 up, Ms. Orona, please, from the Yellow Book 9029-R.

8 BY MR. ROSEN:

9 Q If you can just take a moment to review that to
10 yourself, and then we can go back over to Exhibit 9006-R
11 on page 32. Just take a moment to review that and let me
12 know when you're done.

13 A What is it you want me to review?

14 Q I'm asking you to review what's on the screen,
15 Mr. Sellers, which is what you cite as a block quote in
16 your report, which is page 103?

17 A This is a different section than what I had
18 quoted. This is 4.3, and I had quoted 4.4.

19 Q Well, okay, but we could zoom on the bottom of
20 the page, Mr. Sellers, the bottom of the Yellow Book.

21 A Okay. My report says -- refers to section
22 4.4.4.2.

23 Q So the report says page 103, and it'll represent
24 to you that on the right side of the screen is page 103,
25 it's not coming from that page, is it?



1 A That could be a mistake on the page number, yes.

2 Q Okay. And let's look at section 4.4.4.2, you
3 have the Yellow Book in front of you, Mr. Sellers.
4 Exhibit 9029-R? Can you find that?

5 MR. ROSEN: If we could bring that up? That's
6 actually on page 140, PDF page 150, of Exhibit 9029-R of
7 the Yellow Book.

8 BY MR. ROSEN:

9 Q I'll refer that to you, Mr. Sellers, that what I
10 handed you, it's page 151 of -- it's 150 of 262, correct.
11 Is it in that section? This section has nothing to do
12 with the development approach, does it?

13 A No.

14 Q How did this -- when you identified this error,
15 what -- let me state that differently. Why did this
16 happen, Mr. Sellers? And I'll represent this is not
17 identified in your errata sheet.

18 A As I sit here today, I can't tell you.

19 Q So you would agree that the quote in your report
20 is about the development approach, right?

21 A Yes.

22 Q So why don't we take a look at the section on
23 that?

24 MR. ROSEN: If you could turn to page 142 of the
25 Yellow Book, and then blow it up for Mr. Sellers to take a

1 look at, to clear off the report if it makes it easier.
2 Just blow up the bottom of the page. Maybe bring page 153
3 over too. No. You've got to go back a page. You've got
4 to go back one page here. Just flip them around here.

5 Your Honor, I think my electronic operator may
6 strangle me at the next break. And I apologize in
7 advance.

8 BY MR. ROSEN:

9 Q The discussion of the development method is
10 section 4.4.5, right?

11 A I'm sorry?

12 Q The section on the development method, right, is
13 in section 4.4.5, correct? Not 4.4.4.2, which we just
14 looked at before.

15 A There's another section about it on page 25.

16 Q What section is that?

17 A 1.5.1.2.

18 MR. ROSEN: Please bring that up, Ms. Orona.
19 It's the bottom of the page there, 1.5.1.2.

20 BY MR. ROSEN:

21 Q This is a discussion of the subdivision
22 development method. Were you intending to either quote or
23 paraphrase from this section in your original report?

24 A I'm reading; just a minute. There's two
25 different sections in the Yellow Book about the

1 subdivision method, and I'm trying to find the second one.

2 (Pause.)

3 THE WITNESS: My intent was to quote one of
4 those two sections. One's on page 142, and the other
5 one's on page 25.

6 BY MR. ROSEN:

7 Q None of those pages were cited in your report
8 that was filed with the Court --

9 A Oh.

10 Q -- to support that.

11 A It could be an error.

12 Q And those sections were not cited in the report
13 either, correct?

14 A As I said, it could be an error.

15 Q And those are errors you would agree that you
16 did not identify in your errata sheet, which is Exhibit
17 9008-R?

18 A I agree.

19 Q So if you could just bring back up the block
20 quote on page 32 of Exhibit 9006-R that we were just
21 looking at before. This starts "The development" method -
22 - "approach", I'm sorry. Going back to our prior
23 discussion, this is presented as a block quote, correct?

24 A Yes.

25 Q And your intent in making a block quote was to

1 convey to the reader that this was a verbatim quotation
2 from the Yellow Book; is that right?

3 A The original intent was, yes.

4 Q Okay. Now, Mr. Sellers, as we discussed, you're
5 quite familiar with the Yellow Book. Can you identify
6 anywhere in the Yellow Book, Exhibit 9029-R, which you
7 have in front of you, where this quotation appears?

8 A Not as I sit here today.

9 Q Well, I think we could actually use a little
10 electronic magic here and bring up --

11 MR. ROSEN: If possible, Ms. Orona, in Adobe,
12 this Exhibit 9029-R. So I'd like to -- Ms. Orona, if you
13 could go into the find box here, the little search box,
14 and then I'm going to block verbatim from Mr. Sellers'
15 report the phrase "Anticipated use or subdivision
16 approach".

17 BY MR. ROSEN:

18 Q Do you see that on the screen, Mr. Sellers?

19 A Yes.

20 MR. ROSEN: I'm going to ask Ms. Orona to run
21 the search function in the Yellow Book, Exhibit 9029-R.

22 BY MR. ROSEN:

23 Q Can you see, Mr. Sellers, where it says, "Adobe
24 Acrobat has finished searching the document. No matches
25 were found."?

1 A I see that.

2 MR. ROSEN: So let's look at the next, let's go
3 back, Ms. Orona, to Exhibit 9006-R.

4 BY MR. ROSEN:

5 Q And the very next paragraph of what we were
6 looking at here, and that was page 31. Technology is
7 great until it's not. Okay. So we're going back to page
8 30 of the report.

9 MR. ROSEN: Back a page. Okay. I want you to
10 blow up the paragraph that says, "Established in The
11 Appraisal of Real Estate".

12 BY MR. ROSEN:

13 Q And just take a moment to read that to yourself.

14 MR. PAVILONIS: I just want to point out that
15 the footnote that's being quoted here is footnote 73, the
16 paragraph --

17 MR. ROSEN: Yes.

18 MR. PAVILONIS: -- above is 72 and 73. Just how
19 it --

20 MR. ROSEN: Mr. Pavilonis is correct.

21 If you could bring up footnote 72, please, which
22 is what I'm referring to. You can bring them all up.
23 Let's drop it down a little bit. There.

24 BY MR. ROSEN:

25 Q Now, for this paragraph, Mr. Sellers, your

1 footnote 72 cites two sources, The Appraisal of Real
2 Estate, 15th Edition at page 206 and the Yellow Book
3 Section 1.5.2, (the unit rule), page 36; you see that?

4 A Yes.

5 Q Let's take a look at page 206 of The Appraisal
6 of Real Estate, 15th Edition, which is Exhibit 9046-R.
7 Let me just blow that up.

8 MR. ROSEN: Just the text there. Yeah.

9 BY MR. ROSEN:

10 Q So Mr. Sellers, you agree with me that the
11 headings on this page of The Appraisal of Real Estate are
12 framing, insulation, and ventilation, correct?

13 A Correct.

14 Q This is not about the unit rule? This page is
15 not about the unit rule?

16 A The quote -- correct. But the quote is not
17 about the unit rule. It's the quote for The Appraisal of
18 Real Estate is about the preferred method for land
19 valuation is sales comparison.

20 Q Well, the paragraph that we were just looking at in
21 your report on page 30 says, in the second sentence,
22 "UASFLA's strict adherence to the unit rule and its
23 preclusion of the summation method are the benchmarks by
24 which the Tax Court uses to measure the credibility of an
25 expert's report".



1 So going back to the Yellow Book, Exhibit 9029-
2 R, this page on framing, insulation, and ventilation, this
3 has absolutely nothing to do with the unit rule, summation
4 method, and what the Tax Court uses; is that correct?

5 A That's correct. Let me --

6 Q Thank you.

7 A -- let me correct the situation. The first
8 quote -- there's two quotes you're talking about, but
9 they're not quotes. All I'm doing there is referencing
10 the page numbers that The Appraisal of Real Estate --

11 Q Um-hum.

12 A -- talks about the sales comparison approach
13 being the preferred method, and in the Yellow Book, the
14 description of the unit role.

15 Q But we're looking now first at The Appraisal of
16 Real Estate --

17 A Yes.

18 Q -- which is the --

19 A These are not intended to be quotes.

20 Q Well, you're citing them for support. Even
21 though they're not quotations, you're telling the reader
22 of your report that your assertion in this paragraph is
23 supported by what I think we would all regard as a learned
24 treatise, The Appraisal of Real Estate and the Yellow
25 Book, correct?

1 A Correct.

2 Q But there's nothing on page 206 of The Appraisal
3 of Real Estate, which we're looking at here, framing,
4 insulation, and ventilation that has anything to do with
5 these topics.

6 A That is the incorrect page number.

7 Q Sitting here today, you don't know what the
8 correct page number is?

9 A I have it quoted again in my report later that
10 very likely could have it.

11 Q But you don't know sitting here right now
12 whether there's another error or it's correct over there?

13 A It's in the land valuation chapter. It's in The
14 Appraisal of Real Estate, as I recall, three different
15 times.

16 Q But you would agree it's not here?

17 A I would agree it's not here.

18 Q Okay.

19 MR. ROSEN: If we can now go to the second
20 citation in footnote 72 of Exhibit 9006-R, which is back
21 to the Yellow Book at page 36. 36.

22 (Counsel confer.)

23 MR. ROSEN: You could blow that up.

24 BY MR. ROSEN:

25 Q So we're now looking at page 36 of Exhibit 9029-

1 R. The sections on this page are about direct
2 capitalization, yield capitalization, discounted cash flow
3 analysis, and the reconciliation process in final opinion
4 of value.

5 A The unit rule is on 1.5.3.1.4 --

6 Q But that's not what you cited in your --

7 A -- on page 35.

8 Q -- it's not what you cited in your report,
9 correct?

10 A That's correct.

11 Q Okay. None of these sections have anything to
12 do on page 36 with the unit rule, correct?

13 A I don't know that, but.

14 Q Would you like to take a moment to read it?

15 A What sections are you speaking of?

16 Q I'm asking you to look at the page that we're
17 looking at from the Yellow Book starting at 1.3 -- is it
18 1.5? -- .4.4, 1.5.4.5, and 1.6.

19 A Oh, on the left-hand side?

20 Q Correct.

21 A Okay.

22 MR. PAVILONIS: And just for clarification, the
23 section he's citing is 1.5.2. It's on the screen as
24 1.5.4.

25 MR. ROSEN: Precisely my point, Your Honor. I

1 can move on. The record will -- the transcript will speak
2 for itself.

3 BY MR. ROSEN:

4 Q Just to make sure, though, if we go flip to the
5 prior page in the Yellow Book, Exhibit 9029-R.

6 A Are you speaking to me?

7 Q Yes, sir. If I could just direct your attention
8 to the left-hand side of the screen, which is Exhibit
9 9029-R. You can just take a moment, I don't know if Ms.
10 Orona can make it a little bigger for him. But if not,
11 it's exhibit -- you have the Yellow Book in front of you.
12 Now, let's go back to 1 -- what happens to 1 -- I think
13 we need 1.5.2 on page 26, please, of the Yellow Book.

14 A The correct citation should be on page 44,
15 section 1.10.1.

16 Q Mr. Sellers, we've gone through a very large
17 number of these corrections. From my perspective, none of
18 these appear to be typographical errors. Can you explain
19 to the Court how such errors of this nature can happen?

20 A As I sit here today, I can't give you an
21 explanation about how it happened.

22 Q Can you give the Court an explanation as to why
23 you didn't catch the errors we've been talking about that
24 are not reflected on your errata sheet?

25 A No, I can't. I can give you the correct one,

1 I'm looking at it on -- in the Yellow Book now.

2 MR. ROSEN: One moment, Your Honor?

3 Let's go to page 19 of Exhibit 9006-R, which is
4 PDF 21. If you could blow up the paragraph that says,
5 "The appraiser must be careful", it's the second to last
6 indented block quote on the page. If you'll bring the
7 footnote up too, Ms. Orona? You're one step ahead of me.
8 Thank you.

9 BY MR. ROSEN:

10 Q Just take a moment, Mr. Sellers, to review that,
11 and let me know when you're done.

12 (Pause.)

13 BY MR. ROSEN:

14 Q Have you finished reading that, Mr. Sellers?

15 A No. I'm looking at it, but hold just a minute.

16 Q Take your time, please. I'm not rushing you. I
17 don't have a question yet. I just want to know if you've
18 read it and you've refamiliarized yourself with this
19 footnote. Have you, sir?

20 A Now, what's your question?

21 Q So you see this is footnote 49. You recall when
22 we were talking about your errata sheet for Mr. Catlett's
23 report that we were talking about footnotes 46, 47, and
24 48; do you recall that? You could refresh your
25 recollection by looking at Exhibit 9008-R, which is your

1 errata sheet for Mr. Catlett's report; do you see that?

2 A Yes.

3 Q So this footnote 49 immediately follows the
4 three that are addressed in your errata sheet, you agree?

5 A So this what?

6 Q This footnote 49 follows after the footnotes 46,
7 47, and 48, which you did address in your errata sheet,
8 correct?

9 A Correct.

10 Q So your footnote attributes this to the Yellow
11 Book at page 136; you agree with that?

12 A Yes.

13 Q Okay.

14 MR. ROSEN: I don't know if it's possible, Ms.
15 Orona, but if we could bring up page 19 -- keep that up
16 and also open up the Yellow Book to Exhibit 9029-R at page
17 136.

18 BY MR. ROSEN:

19 Q Just take a moment to review the Yellow Book
20 page, and let me know when you've done so, which is on the
21 right-hand side of the screen.

22 A Okay.

23 Q Now, Mr. Sellers, would agree with me that this
24 page that we're looking at, page 136 of Exhibit 9029-R,
25 does not contain the block quote that we're looking at on

1 the left-hand side of the screen that says, "The appraiser
2 must be careful"?

3 A Yes.

4 Q I'm sorry, sir?

5 A I said yes.

6 Q It's not on that page, correct?

7 A Yes.

8 Q Yes -- I'm sorry, just so the record's clear,
9 yes, it is or no, it's not? I'm sorry.

10 A Could you --

11 Q Does --

12 A -- rephrase the question?

13 Q Yes. Yes. You would agree with me that the
14 quote doesn't appear on that page?

15 A Correct.

16 Q Okay. Now, Ms. Sellers, if we were to search
17 for that quote in the Yellow Book, Exhibit 9029-R, you
18 would agree with me that we're not going to find it
19 anywhere in the Yellow Book?

20 A I don't know.

21 MR. ROSEN: Ms. Orona --

22 THE WITNESS: I believe the Yellow --

23 MR. ROSEN: -- can we go back --

24 THE WITNESS: -- Book, sitting here looking at
25 it, and it should be in the areas of 4.8 --

1 BY MR. ROSEN:

2 Q Oh, okay.

3 A -- because that's where they're talking about
4 the natural --

5 Q Sorry, Mr. Sellers, I didn't mean to overtalk
6 you.

7 MR. ROSEN: Can we, Ms. Orona, could we please
8 bring up the searchable version of Exhibit 9029-R again,
9 PDF? And I'm giving you a couple of words to search for.
10 We'll take the first words from the block quote, which are
11 "The appraiser must be careful".

12 THE WITNESS: I noticed when she was searching,
13 "The appraiser must be" came up.

14 BY MR. ROSEN:

15 Q Well, let's back it up then. Let's see what we
16 got.

17 MR. ROSEN: Can you blow that up, please? Is
18 that the only hit, Ms. -- well, let's see, there's one hit
19 there. You could probably just zoom it, right?

20 BY MR. ROSEN:

21 Q And that's section 1.5.1.3, which deals with
22 ground leases. This has nothing to do with mineral
23 estates, does it?

24 A No.

25 MR. ROSEN: Can we search and see if there's any

1 other hits?

2 BY MR. ROSEN:

3 Q Okay. This is section 4.13.1. Does this have
4 anything at all to do with distinguishing the value of
5 mineral-bearing land and the value of a business
6 enterprise?

7 A No.

8 MR. ROSEN: Keep searching. Is there any more,
9 Ms. Orona? Hopefully not.

10 THE WITNESS: There are not.

11 BY MR. ROSEN:

12 Q Now, to confirm, this error is not listed on
13 your errata sheet from Mr. Catlett's report, Exhibit 9006-
14 R, is it?

15 A Correct.

16 Q Let's stay on page 19 of Exhibit 9006-R, and
17 that's PDF page 21.

18 MR. ROSEN: And if you could blow up the last
19 block quote that starts with "Valuations based on", and
20 then pull up the footnote, which is footnote 50.

21 BY MR. ROSEN:

22 Q And just take a moment to review it to yourself,
23 and let me know when you've done so. Have you finished
24 reviewing that, Mr. Sellers?

25 A Yes.

1 Q Okay. Footnote 50 attributes this quote to page
2 135 of the Yellow Book.

3 MR. ROSEN: So if we could bring up Exhibit
4 9029-R of the Yellow Book at page 135, and if we could
5 keep that quote open, I would appreciate it.

6 BY MR. ROSEN:

7 Q So we're looking at the first block quote,
8 sorry, it's the second to last block quote on the page,
9 "The appraiser must be careful". Mr. Sellers, you would
10 agree with me that that quote appears nowhere on page 135
11 of the Yellow Book, correct?

12 A I agree.

13 Q In fact, nothing on this page even discusses the
14 concept of valuation by multiplying the estimated minerals
15 in place by price, correct?

16 A Correct.

17 MR. ROSEN: Just to correct the record, I was
18 referring to the last, not the second to the last block
19 paragraph that is valuation on unit times price method.

20 BY MR. ROSEN:

21 Q And that doesn't appear anywhere on page 135 of
22 the Yellow Book, does it?

23 A Correct.

24 MR. ROSEN: Your Honor, I've completed my voir
25 dire on the Catlett rebuttal, which is Exhibit 9006-R. I

1 do have some voir dire -- briefer, more brief, I should
2 say, on Mr. Sellers' rebuttal to Shea. May I ask for a
3 very brief recess to just see if I could streamline and
4 clean some of this out and get it done?

5 THE COURT: Yes.

6 Mr. Pavilonis?

7 MR. PAVILONIS: I was just about to recommend
8 since the witness has been on the stand for almost two
9 hours, we take a brief recess.

10 THE COURT: Okay. We will take a brief recess
11 until a little after 11 o'clock.

12 And just let the trial clerk know when you're
13 ready.

14 MR. ROSEN: Thank you, Your Honor.

15 MR. PAVILONIS: If it's possible the witness has
16 to use the restroom, he can use the restroom? You can
17 instruct him not to talk to anybody, obviously.

18 THE COURT: Yes.

19 MR. PAVILONIS: Okay.

20 THE COURT: He's still under --
21 You are still under oath.

22 MR. ROSEN: Your Honor, Your Honor.

23 THE CLERK: All rise.

24 (Whereupon, a recess was held from 10:53 a.m.
25 until 11:10 a.m.)

1 THE CLERK: All rise.

2 THE COURT: You may be seated.

3 MR. ROSEN: May I proceed, Your Honor?

4 THE COURT: Yes, you may.

5 MR. ROSEN: Thank you.

6 RESUMED VOIR DIRE

7 BY MR. ROSEN:

8 Q Okay. Mr. Sellers, I now want to talk about
9 your rebuttal report to Mr. Shea, which has been marked as
10 Exhibit 9007-R. So I'm not going to pull that one up
11 quite yet. I want to go first to the errata sheet for Mr.
12 Shae's report, which is Exhibit 9009-R.

13 MR. ROSEN: If you could just blow up the text
14 on the page.

15 BY MR. ROSEN:

16 Q So we have four entries for correction, Mr.
17 Sellers, is that right, on your rebuttal to Mr. Shea's
18 report?

19 A Yes.

20 Q Lot less than Mr. Catlett's report, correct?

21 A Yes.

22 Q Do you know why there's such a disparity in
23 corrections between the two reports in terms of the number
24 of corrections?

25 A It was a much shorter report.



1 Q Okay. That's fair. Let's look at entry number
2 2 on your errata sheet, Exhibit 9009-R, refers to page 19,
3 footnote 44, should state section 1.10.3, page 47, see
4 that?

5 A Yes.

6 Q Okay. So let's take a look at your rebuttal
7 report to Mr. Shea's report, Exhibit 9007-R, at PDF page
8 21.

9 A And what footnote was it?

10 Q It's page 19 of the report, PDF page 21.

11 MR. ROSEN: And if you could just blow up the
12 top of the page, please, Ms. Orona. Yeah. That's good.
13 That's plenty.

14 BY MR. ROSEN:

15 Q I want you to focus on that second sentence that
16 starts "UASFLA states unequivocally", if you could just
17 read that to yourself. Let me know when you're done.

18 A Okay.

19 Q Great. Now, the end of that sentence has a
20 footnote to footnote 44; you see that?

21 MR. ROSEN: And if we could pull up that
22 footnote.

23 BY MR. ROSEN:

24 Q Now, I understand that you corrected this on
25 your errata sheet, Exhibit 9009-R, but I want to take a

1 look at the original citation.

2 MR. ROSEN: If we could, Ms. Orona, go to
3 section 1.5.2.3 of the Yellow Book, Exhibit 9029-R, which
4 is page 27? If you can just blow up this, starting at
5 1.5.2.3? There you go.

6 BY MR. ROSEN:

7 Q Okay. Just take a moment to familiarize
8 yourself with what's on this page and let me know when
9 you've done so. Can you just let me know when you're
10 finished, Mr. Sellers?

11 A Yes.

12 Q Okay. This section deals with the adjustment
13 process under the sales comparison, correct?

14 A Yes.

15 Q It does not state unequivocally, as you said in
16 your report lodged with the Court as your direct
17 testimony, that the value of the business conducted on the
18 property is not a proper element of compensation?

19 A That has been corrected on the errata sheet.

20 Q Understood. But I'm asking, with respect to
21 what was in your report that was lodged with the Court as
22 your direct testimony, this section that you cited does
23 not state what your report lodged with the Court said that
24 it stated? Recognizing that you have since prepared and
25 submitted an errata sheet.



1 A Yes. I have since corrected it on the errata
2 sheet.

3 Q So if we could also check pages 36 through 38 of
4 the Yellow Book? And I know you have it there in paper
5 form, Exhibit 9029-R, because that was part of your
6 original citation as well.

7 Let me know when you -- you don't have to read
8 it. I was really just going off the topical headings
9 here. These sections deal with direct capitalization,
10 yield capitalization, discounted cash flow analysis, the
11 reconciliation process, and final opinion of value,
12 partial acquisitions, before and after rule, Federal rule,
13 damages, and benefits. You'd agree, correct?

14 A Those titles are correct.

15 Q None of the text on these two pages states
16 unequivocally that the value of the business conducted on
17 the property is not a proper element of compensation; is
18 that correct? These pages.

19 A I'm looking; just a minute.

20 Q Sure. Take your time.

21 A That is correct.

22 MR. ROSEN: Thank you, sir. Let's put the
23 errata sheet away, Exhibit 9007-R (sic), for now. And I
24 want to go to -- I'm sorry; that was 9009-R is the errata
25 sheet.

1 Let's turn to Exhibit 9007-R, which is your
2 rebuttal report to Mr. Shea. And I want to direct you to
3 page 15 of the report, which is PDF page 17. And I want
4 to block the last paragraph above section D. Thank you.

5 BY MR. ROSEN:

6 Q Can you just take a moment to read that to
7 yourself? And we'll focus in particular on the second
8 sentence, beginning with, "According to UASFLA". You read
9 that?

10 A Yes.

11 Q And you see at the end of that sentence is a
12 footnote, citation number 40?

13 A Yes.

14 Q And that footnote 40 directs the reader to the
15 Yellow Book at pages 135 through 137, correct?

16 A Yes.

17 Q And we see the reference here, again, is to
18 section 4.4.4.2. Do you see that? Sir, do you see it on
19 the screen that the reference here is to the Yellow Book
20 section 4.4.4.2?

21 A Ah, yes.

22 MR. ROSEN: Okay. Well, let's keep up this
23 quote and put up page 135 of Exhibit 9029-R, which is page
24 135 of the Yellow Book.

25 BY MR. ROSEN:

1 Q And you could keep -- you can go. I'm going to
2 ask you to basically page through from page 135, 136, 137,
3 which is the page range you cite, and even to go as far as
4 page 138. Let me know when you've done so.

5 A On page 141, it's talking about the unit rule
6 implications.

7 Q Well, my questions are about the pages that you
8 cite in your report that were not corrected in your errata
9 sheet, which are pages 135 through 137. And I'll carry it
10 forward to page 138. Will you let me know?

11 We could go page by page if it's easier for you.
12 On page 135, page 135 doesn't contain section 4.4.4.2,
13 does it?

14 A No.

15 Q And that page also doesn't say if the income
16 capitalization approach is generally not recommended for
17 undeveloped mineral properties, does it?

18 A No.

19 Q Okay. Let's go to the next page, page 136.
20 Same question, there's no section 4.4.4.2 on this page, is
21 there?

22 A I'm not sure I'm following with you. Are you
23 looking at Yellow Book 136?

24 Q Yellow Book, sir. I'm asking about page 136 of
25 the Yellow Book, Exhibit 9029-R.

1 A Correct.

2 Q And there is no -- this page does not say that
3 the income capitalization approach is generally not
4 recommended for undeveloped mineral properties, does it?

5 A No.

6 Q Well, let's take a look at page 138, one page
7 past your reference. There's no section 4.4.4.2 on page
8 38 of the Yellow Book, is there?

9 A On what page?

10 Q 138. No section 4.4.4.2?

11 A No.

12 Q And again, this page does not say that the
13 income capitalization approach is generally not
14 recommended for undeveloped mineral properties, does it?

15 A No.

16 MR. ROSEN: Your Honor, at this point,
17 Petitioner objects to the admission of Mr. Sellers'
18 rebuttal reports of Mr. Catlett and Mr. Shea at Exhibits
19 9006-R and Exhibit 9007-R, respectively. Mr. Sellers
20 clearly, by his testimony, used artificial intelligence in
21 the preparation of his reports, which in and of itself is
22 not necessarily problematic with respect to the
23 admissibility of his reports. But whether the
24 hallucinations in these reports and the substantive
25 changes that have been couched as corrections of errors in

1 his errata sheet -- some of them were corrected by errata
2 sheet as we saw here, several of which he did not
3 discover, but which we first uncovered here on voir dire.

4 The admissibility of expert testimony is
5 governed by Tax Court Rule 143(g) as the Court is well
6 aware, and there are very specific requirements of rule
7 143(g) and consequences for failure to follow the rule.
8 One thing that's clear from 143(g) is that the lodging of
9 the expert report is, if received into evidence, the
10 direct testimony of that expert.

11 And Rule 143(g) (2) says, "an expert witness'
12 testimony will be excluded altogether for failure to
13 comply with the provisions of this paragraph, unless the
14 failure is shown to be due to good cause and unless the
15 failure does not unduly prejudice the opposing party, such
16 as impairing the opposing party's ability to cross-examine
17 the expert witness or by denying the opposing party the
18 reasonable opportunity to obtain evidence in rebuttal to
19 the expert witness' testimony".

20 I want to talk about the elements of 143(g) (2).
21 The first element is good cause. Respondent has made no
22 showing, or Mr. Sellers has made no showing that his
23 failure to comply with the dictates of this Court's rules
24 are due to good cause. We got no explanation whatsoever
25 as to how these errors could have occurred that are

1 reflected in the errata sheets, nor do we have any
2 explanation as to why we identified additional
3 hallucinations, for want of a better term, in both the
4 rebuttal to Mr. Catlett's report and Mr. Shea's report.

5 And with respect to unduly prejudicing the
6 opposing party, now, this is written in the conjunctive
7 depiction. An absence of good cause is enough to keep
8 these reports out. But in terms of undue prejudice,
9 Petitioner is prejudiced here.

10 Mr. Sellers' rebuttal reports were lodged with
11 the Court pursuant to the Court's standing Pre-Trial Order
12 on January 23rd of 2026. The errata sheets at Exhibits
13 9008-R and 9009-R were not exchanged with Petitioner until
14 over one month later, on February 27th of 2026, slightly
15 more than two weeks before the commencement of this trial.

16 And I want to talk now about the failure to
17 comply with Rule 143(g). The question is whether or not
18 Mr. Sellers' reports bear the indicia of sufficient
19 reliability to be accepted by the Court, or whether the
20 Court, in properly exercising its gatekeeping function to
21 keep out expert testimony that doesn't comply not only
22 with the Tax Court rules, but the Supreme Court precedent
23 in Kumho and this Court's precedents dealing with the
24 admissibility of expert testimony.

25 His reports are inherently unreliable. Quotes



1 seemingly attributed to the Yellow Book do not exist. Mr.
2 Sellers, in his errata sheet for Mr. Catlett, called that
3 paraphrasing, but Mr. Sellers, he's not paraphrasing
4 anything in his correction, and the block quotes in his
5 report, as Mr. Sellers has testified, were intended to
6 convey to Petitioner and to the Court that this was a
7 verbatim -- or these were verbatim quotations from
8 authoritative sources supporting his assertions.

9 Petitioner was left really on the eve of trial
10 to have to pick apart the entirety of every citation and
11 quotation that Mr. Sellers had in his reports to figure
12 out what was real and what was hallucinated. These
13 reports clearly do not satisfy the Daubert standard
14 contained in Federal Rule of Evidence 702, which requires
15 an expert report and testimony to be based on reliable
16 principles and methods.

17 Now, while the Yellow Book itself is of
18 questionable at best application to this case, given that
19 the Yellow Book, by its terms, is limited to cases
20 involving government acquisitions and not the application
21 of section 170 for a conservation easement, it cannot be
22 disputed any longer that Mr. Sellers has not even reliably
23 represented the true contents of the Yellow Book for the
24 Court's consideration even after the submission of his
25 errata sheets on the eve of trial.



1 While Petitioner is not aware of a case like
2 this occurring yet in the United States Tax Court, last
3 year, a district court in Minnesota struck an expert
4 declaration that contained hallucinations. In an order in
5 Kohls v. Ellison, case number 24-CV-3754 in the District
6 of Minnesota, dated January 10th, 2025, the district court
7 found that citation to fake AI generated sources in the
8 expert's declaration shattered his credibility with the
9 district court. More importantly, finding that such
10 testimony failed the reliability test of Federal Rule of
11 Evidence 702.

12 In Kohls, the experts report contained three
13 errors, citation to two nonexistent academic articles, and
14 incorrectly citing the authors of a third article. Here,
15 Mr. Sellers has admitted to over 20 errors in total on his
16 errata sheet from Mr. Catlett's report alone, 4 more on
17 his errata sheet from Mr. Shea's report. And while it's
18 unclear exactly what caused these hallucinations, it
19 appears, based on Mr. Sellers' description of his use of
20 artificial intelligence to assist in his preparation of
21 the report, is based not only on his unreliable use of
22 artificial intelligence, but his failure to correct errors
23 before they prejudiced the Petitioner in this case in
24 preparing to try the merits of the issues before the
25 Court.

1 In sum, Your Honor, it would be a mistake to
2 admit Mr. Sellers' reports into evidence with these
3 hallucinated citations for what they're worth, as is often
4 the case in bench trials.

5 MR. PAVILONIS: May I respond?

6 MR. ROSEN: I'm not finished. I'm sorry.

7 MR. PAVILONIS: Okay.

8 MR. ROSEN: Yeah. Allowing Mr. Sellers to
9 testify allows Respondent to argue on brief that what Mr.
10 Sellers put in his reports -- which again, was his direct
11 testimony, fixed in time at the time that his reports were
12 lodged -- wasn't that wrong or meets the spirit of the
13 Yellow Book. That cannot and should not be the test that
14 the Tax Court applies in exercising its gatekeeper role
15 related to expert testimony.

16 Striking these reports or not admitting these
17 reports today properly puts the onus back on the offering
18 party to make sure that materials presented to the Court
19 as the direct testimony of Respondent's proffered expert
20 witnesses are accurate in the first place. There's been
21 no explanation given to the Court as to why Respondents'
22 counsel didn't catch these before they were lodged, why
23 Mr. Sellers didn't catch them.

24 And then, when Mr. Sellers went back after
25 Respondent's counsel said, hey, you should give your



1 report a review, pushing it back onto Mr. Sellers to do
2 it, even then, and with the limited time that we had to go
3 through everything in this report, we've identified other
4 material hallucinations in the report.

5 So for all these reasons, Petitioner objects to
6 the admission of Mr. Sellers' rebuttal reports to Mr.
7 Catlett and Mr. Shea, Exhibits 9006 and 9007-R.

8 THE COURT: Mr. Pavonis?

9 MR. PAVILONIS: Yes. So Your Honor, I would
10 like to point out that the problems that Mr. Rosen
11 identified goes to the weight, not the admissibility of
12 the report. The purpose of an errata sheet is to correct
13 errors in citations or other errors that the expert
14 notices in their reports. In this case, Mr. Sellers did
15 submit two errata sheets as amended by his further
16 testimony to correct the citation errors that Petitioner
17 pointed out during voir dire.

18 They're obviously capable of cross-examining him
19 on any topics within this report because they were able to
20 use Yellow Book if they wanted to show that there was
21 citations to incorrect paragraphs, so they obviously have
22 the ability through using his citations to see if he cites
23 something incorrectly; they can cross-examine him on that.
24 If he says something that contradicts one of the treatises
25 he cites, they can cross-examine him on that as well or

1 impeach with it.

2 As far as good cause and undue prejudice, Mr.
3 Sellers explained that he used Grammarly, which does
4 sometimes change the wording on the paragraphs, and that
5 he used dictation when he authored it, which means that he
6 was using his spoken word and that Grammarly may have
7 altered or changed some of the terms, and that not every
8 quotation within his report is a block quote word for
9 word, but some of it is paraphrased.

10 As far as unduly prejudicial, like I said,
11 Petitioner has the opportunity to cross-examine and use
12 the treatises for impeachment as they believe that
13 something he cites to or says contradicts what's in his
14 report. And Petitioner does indicate that on February
15 27th, we exchanged the errata sheets. But obviously, it
16 was enough time for them to review the errata sheets and
17 point out any inconsistencies that exist. So they had the
18 ability to go through and identify errors. And for the
19 most part, the errata sheet corrected almost all the
20 errors. The focal point was on several errors that still
21 remain, and Mr. Sellers addressed those during his voir
22 dire.

23 So for that reason, like I said, the extent to
24 which the Court has concerns about the reports, that
25 should go to the weight that the Court gives, not the

1 admissibility.

2 MR. ROSEN: Briefly, Your Honor?

3 THE COURT: Briefly.

4 MR. ROSEN: Thank you. I don't feel the need to
5 go over good cause and undue prejudice; I think that the
6 record speaks for itself. But Respondents' counsel
7 identifying these as errors meriting correction? That's
8 largely just not true. These are not corrections of
9 errors over in material part, they're attempts to
10 substantively change the direct testimony of Mr. Sellers
11 by use of an errata sheet.

12 Yes, this Court does regularly and properly
13 entertain minor typographical errors in reports because
14 that's just the reality of pencils getting sharper on the
15 edge of trial. But what we have here is just a clear
16 record of, at best, nonchalance about the accuracy of
17 this, of what was put forth to the Court as his direct
18 testimony. Literally, barely two weeks before the
19 commencement of this trial.

20 I mean, there's a reason that the Court requires
21 lodging of the expert reports in advance of trial as the
22 direct testimony that fixes the testimony of the expert.
23 And if parties can, whether using AI or not, exercise this
24 lack of due care in testimony and just come in with an
25 erratic sheet and say, yep, everything's fixed now? And

1 it just essentially turns Kumho and Rule 703 and Rule
2 143(g) on its head.

3 THE COURT: Did you want one further thing?
4 Because I'm ready to make my ruling.

5 MR. PAVILONIS: I'll just be very quick. All I
6 would say is that the erroneous corrected citations; the
7 underlying substance of whether the statements are
8 accurate could be subject to cross-examination and
9 impeachment. And that's all I have to have, which goes to
10 weight. So I'll give that.

11 THE COURT: Okay. The Court is very concerned
12 about what happened here this morning. And I've been
13 reviewing Rule 143(g), too, and I don't think it this
14 situation fits as squarely into it as Mr. Rosen would
15 argue. I'm concerned.

16 The rule talks about excluded from failure to
17 comply with the provisions of this paragraph, and I don't
18 think the language is really fitted to this situation.
19 And why I'm concerned is I don't think this language was
20 imagining an expert report full of mistakes, and I view
21 these -- it's full of mistakes, and they're not just
22 typographical errors.

23 And I feel errata sheets are common in expert
24 reports and I think it's easy to make a mistake, and I
25 also feel Mr. Catlett had a mistake in his expert report

1 yesterday that was the calculations in a few places, and
2 that's going to go to my weight when I look at that
3 report, that there was mistakes in those calculations, but
4 the parties worked it out.

5 And so Mr. Pavilonis, I haven't heard here of
6 any concern about Respondents, that I want to be sure you
7 still want this to be the expert report. You want this to
8 be the direct testimony that's on the record for Mr.
9 Silver (sic)?

10 MR. PAVILONIS: Your Honor, can we take a brief
11 recess to discuss amongst Respondent's counsel, then?
12 Unless you've ruled on it. I mean, the position
13 Respondent took is that we acknowledge, obviously, the
14 voir dire pointed out that there errors in the citations.
15 As far as the underlying substance of the report, those
16 things might be correct, but the citations, what they were
17 cited to, apparently are not. And we acknowledge that.

18 So we understand if the Court's concerned about
19 the report and the mistakes. What I'm gathering from what
20 you're saying is that you're not likely to give a lot of
21 weight then, if that's your concern, to the report.

22 THE COURT: That is my concern, because I'm not
23 clear exactly from the witness' answers what he used to
24 write this, and I'm concerned that you can't use any of
25 the USAFLA (sic) cites without double-checking everything.

1 And I would have just thought a report -- I
2 mean, the Court is very careful in anything it sends out.
3 And also, I think Judge Buch has an opinion, and I can't
4 think of it off the top of my head, warning a party about
5 AI and Pre-Trial Briefs.

6 And I know this is different, this is an expert
7 report, and that is why I asked the question, that
8 Respondent's position is this still should be the direct
9 testimony of Mr. Sellers in this situation?

10 MR. PAVILONIS: May I just briefly confer?

11 THE COURT: Yes.

12 (Counsel confer.)

13 MR. PAVILONIS: Your Honor, we appreciate the
14 Court's concerns, and we think that at the end of the day,
15 it does go to the weight, not necessarily the
16 admissibility of the report. So I mean, the Court may
17 ultimately choose not to give it weight. We do think that
18 there is merits to the arguments Mr. Sellers made, and we
19 will evaluate how we use the report going forward -- or
20 the reports, I should say, there's two of them.

21 THE COURT: Well, this brings me back to
22 143(g)(2), that I think it's at the discretion of the
23 Court to allow any additional direct. So I'm not going to
24 allow any -- there won't be any additional direct allowed.
25 So anything on recross (sic) would have to be the scope of



1 cross.

2 MR. ROSEN: And Your Honor, I have no intention
3 on covering the topics from my voir dire again on cross-
4 examination with Mr. Sellers. So those topics are closed
5 from Petitioner's standpoint.

6 THE COURT: And I just want to make sure I'm
7 understanding Respondent's decision. And I know Mr.
8 Seller (sic) has years of experience, and has testified in
9 court before, and that's another reason why I'm concerned,
10 because I think he should -- I believe he was chair of the
11 appraisal committee and other things, that these
12 standards, he should have been someone familiar with them.

13 And granted, I don't know all the Tax -- I
14 couldn't cite all the Tax Court rules; I pulled it out to
15 look at it. But I feel like you should be pulling out
16 things as you're looking at it. So it makes me think, as
17 to the report, what was he looking at as he was pulling it
18 out?

19 So I have grave concerns about this report and
20 in my opinion I probably will address my -- if I let it
21 in, I will address my grave concerns about it.

22 MR. PAVILONIS: Your Honor, may we have ten
23 minutes as a recess to discuss Respondent's views on how
24 we'll proceed with this?

25 THE COURT: Okay.



1 MR. PAVILONIS: Appreciate it.

2 THE COURT: We'll take a ten-minute recess.

3 THE CLERK: All rise.

4 (Whereupon, a recess was held from 11:41 a.m.

5 until 11:53 a.m.)

6 THE CLERK: All rise.

7 THE COURT: Please be seated.

8 Before I hear from Mr. Pavilonis, I just want to
9 clarify something. The Court did slightly misspeak when I
10 said Judge Buch had an opinion. It was actually an order.
11 And it was in docket number 10795-22, and it was released
12 in October of 2024. And I know that orders are not
13 precedent, but I'm not using it as precedent, just
14 mentioning this is a situation where the court did talk
15 about AI. And this is slightly different. But the order
16 does quote a case that is precedent that the Court is not
17 really in the business of dictating to parties the process
18 that they should use when responding to discovery. And I
19 know this is a different situation.

20 But with expert report -- so I think I just want
21 Respondent to be clear that the Court's position is if you
22 stand that you still want to offer this as the direct
23 testimony of this witness, the Court will admit it. But
24 I'm just saying that there will be -- have some concerns
25 about -- that probably we'll address concerns about the



1 reliability.

2 MR. PAVILONIS: Your Honor, Respondent
3 believes -- oh, I didn't -- are you --

4 THE COURT: I'm done.

5 MR. PAVILONIS: Okay. Respondent believes the
6 best path forward is going to be to withdraw Exhibits
7 9006-R and 9007-R in light of the Court's comments. And I
8 think that would conclude that portion of the testimony
9 from Mr. Sellers.

10 THE COURT: Okay. Mr. Sellers, you may step
11 down. Thank you.

12 MR. PAVILONIS: Your Honor, may I retrieve the
13 reports from the witness stand?

14 THE COURT: Yes.

15 MR. PAVILONIS: Thanks.

16 (Pause.)

17 MS. RAJ: Good afternoon, Your Honor. Randi Raj
18 for Respondent. Respondent will call Ms. Rentz as an
19 expert rebuttal witness in geology, mineral resource
20 evaluation, and mineral market analysis.

21 MR. WHARTON: Your Honor, Daniel Wharton for
22 Petitioner. I know Ms. Rentz hasn't been qualified as a
23 witness before this Court before. And I'm not sure if
24 Respondent plans on introducing her qualifications or not.

25 MS. RAJ: Yes, Your Honor. I intend to



1 qualify --

2 MR. WHARTON: Okay.

3 MS. RAJ: -- her as an expert rebuttal witness
4 in geology, mineral resource evaluation, and mineral
5 market analysis, unless Petitioner would like to agree to
6 admit her as an expert in these topics.

7 MR. WHARTON: I think Petitioner would prefer to
8 voir dire after hearing Respondent's questions. So I can
9 wait. I just wanted to make sure that that was what we
10 were doing. When she said, the first time, that she was
11 offering her in advance, I wanted to make sure we were
12 going to get a chance to ask questions about
13 qualifications. Thank you.

14 THE COURT: Okay. You may remain standing and
15 the trial clerk will swear you in.

16 THE CLERK: Please raise your right hand.

17 SHANNON RENTZ

18 having been duly sworn, testified as follows:

19 THE CLERK: Please state your name for the
20 record.

21 THE WITNESS: My name is Shannon Rentz.

22 THE CLERK: Thank you.

23 VOIR DIRE

24 BY MS. RAJ:

25 Q Ms. Rentz, why are you here today?



1 A Today, I am here to offer testimony in support
2 of the rebuttal report that I submitted to the Court.

3 Q And what is your educational background from
4 college onwards?

5 A In 2015, I graduated from Middle Tennessee State
6 University with a degree in geosciences, with
7 specialization in geology. And in 2017, I graduated from
8 Missouri State University with a Master's of Science in
9 geospatial science with a specialization in geology, as
10 well as with a graduate certificate in geospatial
11 information sciences.

12 Q And what professional licenses or registrations
13 do you have?

14 A I'm a licensed professional geologist. My
15 license was issued by the State of Texas Board of
16 Professional Geoscientists.

17 Q And are you a member of any professional
18 associations?

19 A I am. I'm in the Geological Society of America
20 as well as the Rocky Mountain Association of Geologists.

21 Q And what is your current position and title?

22 A I am currently a geologist in the Division of
23 Minerals Evaluation within the Appraisal and Valuation
24 Services Office in the Department of the Interior.

25 Q And how long have you been in your current



1 position?

2 A Since 2018.

3 Q And what do you do for the Appraisal and
4 Valuation Services Office?

5 A As a geologist in the Division of Minerals
6 Evaluation, I provide mineral assessments, market
7 analysis, and financial analysis in support of realty
8 appraisal as well as mineral leasing and disposals across
9 Federal and Indian lands.

10 Q And have you held any other positions during
11 that time frame?

12 A I have. I had an (sic) detail as an acting
13 program lead for the Federal Lands Division.

14 Q And how does your experience as an acting
15 program lead tie into the kind of review that you did
16 here?

17 A Review's a regular function of that position,
18 serving as the primary technical reviewer for my
19 subordinates' reports as well as doing case triage.

20 Q And what experience do you have in preparing
21 mineral property evaluations?

22 A Mineral property evaluations are a regular part
23 of my duties. I would say I work on them on a weekly
24 basis. If I had to estimate, I'd say I've done probably
25 around 150.

1 Q And what do the mineral property evaluations you
2 have done generally entail?

3 A The evaluations I've done involve looking at the
4 geology of the subject; looking at the geographic market
5 as related to transportation networks; location, as close
6 to population centers; as well as the mineral market
7 analysis, looking at active producers of whatever the
8 mineral in question is; looking at cost, reasonable
9 pricing for the material in question; as well as other
10 factors.

11 Q Have you done any mineral property evaluations
12 similar to the current case?

13 A I have. I've worked on evaluations that were
14 similar in property size, in the type of material produced
15 in aggregate, in the rural location, in the southeast
16 region as well.

17 Q And have any mineral property evaluations you've
18 done involved construction aggregates?

19 A Yes, they have.

20 Q And what experience do you have in reviewing
21 fair market mineral evaluations?

22 A Reviewing fair market mineral evaluations is
23 also a regular part of my duties. I've provided reviews
24 for multiple agencies in the Department of Interior,
25 including the Bureau of Land Management, the Fish &

1 Wildlife Service, Bureau of Reclamation, the Bureau of
2 Indian Affairs, as well as, now, the IRS.

3 Q And what is the difference between mineral
4 valuation and mineral evaluation?

5 A Mineral valuation would involve all the same
6 components as an evaluation but then take that analysis to
7 a higher level and put an actual dollar amount, either
8 dollars per net mineral acre or dollars per ton on
9 whatever the property or mineral in question is.

10 Q And what experience do you have preparing
11 mineral evaluation reports?

12 A I would say all of the evaluations that I've
13 done have been in report form.

14 Q And what was the scope of the mineral evaluation
15 reports you have prepared?

16 A I've worked on evaluations ranging from a few
17 acres in property size up to entire reservation-wide or
18 statewide analysis.

19 Q And how many involve geographic and financial
20 market analysis with respect to minerals?

21 A All evaluations would have some component of
22 geographic and mineral market analysis included.

23 Q And who are the clients that you generally
24 prepare reports for?

25 A So my office and I work with bureaus across all



1 of the Department of Interior as well as the -- now, for
2 the first time, the IRS, for me. And we do reports and
3 review the same.

4 MS. RAJ: Respondent offers Ms. Rentz as an
5 expert in geology, mineral resource evaluation, and
6 mineral market analysis.

7 MR. WHARTON: One moment, Your Honor, while I
8 write that down. I just want to make sure I have all the
9 proffers right. I would take a moment to voir dire the
10 witness' qualifications.

11 Was the last topic mineral market analysis?

12 MS. RAJ: Yes.

13 MR. WHARTON: Thank you. Yes, Your Honor. May
14 I have a few questions on --

15 THE COURT: Yes.

16 MR. WHARTON: -- voir dire of the
17 qualifications? Thank you.

18 VOIR DIRE

19 BY MR. WHARTON:

20 Q Good morning, Ms. Rentz.

21 A Good morning.

22 Q Actually, it just turned over from noon. Good
23 afternoon.

24 A Good afternoon.

25 Q My name's Dan Wharton. I'm an attorney for the



1 Petitioner. You're a geologist by training, correct?

2 A That's correct.

3 Q And you have a graduate degree in geology?

4 A Yes.

5 Q And you also have advanced coursework, I saw on
6 your resume, in geospatial information science?

7 A That's correct.

8 Q That's often referred to as GIS?

9 A I believe so.

10 Q I enjoy GIS myself. That's a cool field.

11 You're a licensed geologist in the State of Texas?

12 A Yes.

13 Q And you're a member of the Geological Society of
14 America?

15 A Um-hum.

16 Q And the Rocky Association of Geologists?

17 A That's correct.

18 Q I'm not challenging your choice of academic
19 studies, but I just want to confirm, you don't have a
20 degree in economics?

21 A That's correct.

22 Q Or mineral economics?

23 A That's correct.

24 Q You didn't take any coursework at the graduate
25 level in mineral economics?



1 A I've taken some coursework from the Colorado
2 School of Mines on mineral evaluation.

3 Q On discounted cash flow analysis, right?

4 A Correct.

5 Q I saw that in your resume as well. In fact, you
6 say you're proficient, right, in the following topics:
7 discounted cash flow analysis related to property
8 valuation, and mineral development potential, and due
9 diligence?

10 A Correct.

11 Q In your experience, can you use a discounted
12 cash flow method to value real property with mineral
13 development potential?

14 A I use DCF analyses to evaluate the mineral
15 components of property in support of realty appraisal.

16 Q Thank you. Were you here for Mr. Gold's
17 testimony earlier this week?

18 A I was.

19 Q Okay. He described teaching a class at the
20 University of Utah that he called Aggregates 101. Do you
21 remember that?

22 A I remember him saying that, yes.

23 Q He said it was a class that teaches the
24 distinctions between aggregates and other minerals and
25 metals?

1 A I believe I heard that. Yes.

2 Q Did you ever take a class like that focusing
3 purely on aggregates in your undergraduate or graduate
4 career?

5 A Not specifically about aggregates.

6 Q Okay. You've never owned your own limestone
7 quarry?

8 A I have not.

9 Q Okay. You've never managed a limestone quarry?

10 A I have not.

11 Q And you've never worked for a limestone quarry
12 in the private practice?

13 A I have not.

14 Q Okay. So any of your experience in mineral
15 resource evaluation or mineral market analysis, that comes
16 from your time working for the Federal government, right?

17 A That's correct.

18 Q Okay. And that consists of approximately seven
19 years, right, at the Department of Interior?

20 A That's correct.

21 Q Okay. And you work for the Appraisal and
22 Valuation Services Office there. And if I call that AVSO,
23 will you agree that that's good?

24 A Yes.

25 Q I don't know what I'd say otherwise. So AVSO --



1 A That's all right.

2 Q -- it is. And your work there, would you say it
3 focuses on checking mineral appraisal work done by others,
4 or would you say that more of your work is geared toward
5 conducting your own mineral appraisal work independent of
6 others' reports?

7 A It's a mix of both.

8 Q Okay. Were you in the courtroom yesterday when
9 Mr. Stine testified?

10 A I did.

11 Q Okay. He told the Court that he conducted a
12 market study for the State of Utah on the demand for
13 limestone aggregate covering, like, ten counties?

14 A I heard him say that. Yes.

15 Q Okay. Have you ever conducted a mineral demand
16 study like that?

17 A Yes, I have.

18 Q Okay. What about one for construction
19 aggregates?

20 A As a component of aggregates, yes, construction
21 aggregates were included.

22 Q So multiple minerals were covered in that study?

23 A Yes.

24 Q Okay. Your CV actually discusses two projects
25 I'd like to discuss.

1 MR. WHARTON: Can we pull up Ms. Rentz's report,
2 which has not been admitted yet, but I just wanted to look
3 at her CV. That's Exhibit 9005-R. And specifically, look
4 at PDF page 27, which I think is the second page of your
5 CV.

6 BY MR. WHARTON:

7 Q I'm looking at two separate items under your
8 select project experience here.

9 A Yes.

10 Q Both of those entries have a common name between
11 them. They're (sic) cover different properties. So the
12 first one I want to look at is area-wide mineral material
13 valuation for select mineral material commodities. Did
14 you understand what I'm saying if I say that?

15 A Yes.

16 Q And one of those on the list is from California,
17 and it's dated 2022. One of them is on the list from
18 Alaska, dated 2024, right?

19 A Correct.

20 Q Okay. Would you agree with me that the purpose
21 of those area-wide mineral material valuations is to set a
22 fair market value price for a unit of certain commodities?

23 A That's one of the purposes of those, yes.

24 Q And when I say, "a unit", I mean, if the Bureau
25 of Land Management manages lands, and they have a ton of



1 sand that they want to sell, they have to sell that by the
2 Federal regulation of fair market value, right?

3 A That is my understanding.

4 Q And so the goal of this particular study is to
5 value the unit price of a particular mineral -- and it
6 could be multiple minerals, right -- in that particular
7 market area; is that accurate?

8 A Yeah, generally. Yes. Correct.

9 Q Okay. And those area-wide mineral material
10 valuations, they're conducted pursuant to publications
11 from the Bureau of Land Management, right?

12 A They are to aid the Bureau of Land Management in
13 following their own mineral material handbook. Yes.

14 Q And the Bureau of Land Management, I'll call it
15 BLM.

16 A Sure.

17 Q Okay. BLM has a publication called MS-3630?

18 A I believe you.

19 Q And I don't know; is that the guidelines by
20 which you evaluate these mineral material valuation
21 studies?

22 A I don't know the name of that off the top of my
23 head right now.

24 Q Okay. I just want to confirm, when we're
25 talking about, again, this unit price for material that

1 we're pricing in these area-wide mineral and material
2 studies, that's for minerals that have already been
3 extracted from the ground?

4 A Those are, I believe -- I would have to double-
5 check, but I believe that's supposed to be an in-bank
6 value, not including transportation.

7 Q Right. But guess my point gets to those aren't
8 valuing a -- not to put too many words on it -- a resource
9 or reserve that's currently in the ground. What they're
10 doing is saying, for every ton of mineral that somebody
11 brings to us, we're going to pay this fair market value
12 price; is that accurate?

13 A I would say that's accurate.

14 Q Okay. I want to look at two more projects on
15 your resume. There are two reviews here -- and they're
16 both going to start with the word "review" -- but they're
17 reviews of DME Technical Review of BLM Estimate of Mineral
18 Material Fair Market Value. So there's one on here,
19 right, that covers Glass Buttes obsidian in Oregon in
20 2020?

21 A Correct.

22 Q And one for the Slaughterhouse Canyon, Hanson
23 Aggregate operation in California in 2021?

24 A Yes.

25 Q Okay. This is a different type of report, I'm



1 gathering from what you're telling me, right?

2 A This is a review of a valuation.

3 Q Okay. And these are BLM mineral material fair
4 market valuations, not area-wide ones like we talked about
5 a minute ago?

6 A These are both site-specific. Yes.

7 Q And they're conducted pursuant to a different
8 set of standards?

9 A No.

10 Q Oh, okay. These aren't conducted pursuant to
11 H360-1 (sic) from the BLM?

12 A Again, I would need to double-check that.

13 Q Okay. You don't know then. But as you said,
14 these are for generally site-specific projects, right?

15 A Yes.

16 Q And they might be bigger projects than the area-
17 wide mineral ones?

18 A They might be. Yes.

19 Q Okay. Slaughterhouse Canyon and Hanson
20 Aggregate operation. That land was BLM-held land that was
21 next to an existing aggregate operation, right?

22 A Correct.

23 Q Okay. And BLM wanted to know how much it should
24 sell the mineral for collected from that land?

25 A I believe they did. Yes.



1 Q And so that was my question. Is that mineral
2 material fair market valuation that you reviewed, was that
3 valuing the unit price of that material, like the per ton,
4 or was it valuing the entire real property interest?

5 A I don't recall at this moment.

6 Q Okay. Your resume says you have experience
7 evaluating exploration properties?

8 A That's correct.

9 Q Any aggregates among those that you evaluated on
10 an exploration basis -- exploration stage?

11 A I believe so, yes.

12 Q You believe so. How many would you say
13 exploration stage aggregate properties have you evaluated?

14 A I would estimate five to ten.

15 Q Five to ten. Okay. You've never previously
16 testified at trial as an expert?

17 A No, I have not.

18 Q Okay. You've never been qualified by the Court
19 in any of the areas for which Respondent just proffered
20 here?

21 A No, I have not.

22 MR. WHARTON: At this time, Your Honor,
23 Petitioner has concerns about the valuation experience
24 espoused by Ms. Rentz -- the valuation-specific
25 experiences. Her testimony was that it related to reviews



1 of other projects and not independent valuation work that
2 she conducted on her own.

3 Similarly, with the evaluation, it looked like
4 the evaluation work was a evaluation of projects where
5 they were determining a unit price for a material, but
6 they weren't necessarily valuing resources or reserves in
7 the ground like we are in this case.

8 Petitioner doesn't have any objection to
9 proffering Ms. Rentz or qualifying her as an expert in
10 geology. We have concerns about the other two.

11 MS. RAJ: Respondent is not offering Ms. Rentz
12 as an expert in valuation. We're offering Ms. Rentz as an
13 expert in geology, mineral resource evaluation, and
14 mineral market analysis. Your Honor, I'm happy to ask
15 additional questions, if necessary. However, I believe
16 that Ms. Rentz has established her experience and since
17 2018 with the Division of Minerals Evaluation has given
18 her the background necessary.

19 THE COURT: At this time, Ms. Rentz is certified
20 in the three fields: the geologist, mineral evaluation,
21 and then mineral market -- well, it was mineral market
22 analysis?

23 MS. RAJ: Yes, Your Honor.

24 THE COURT: Yes.

25 MR. WHARTON: Thank you.

1 DIRECT EXAMINATION (REBUTTAL)

2 BY MS. RAJ:

3 Q Ms. Rentz, did you prepare an expert rebuttal
4 report for this case?

5 A I did.

6 MS. RAJ: Your Honor, may I approach and hand
7 the witness and the Court a copy of the report marked as
8 Exhibit 9005-R?

9 THE COURT: Yes.

10 BY MS. RAJ:

11 Q I've handed you an exhibit marked for
12 identification as Exhibit 9005-R. Will you review it and
13 tell the Court what it is?

14 A This is a copy of the report that I submitted.

15 Q Would you mind being more specific?

16 A This is a copy of the rebuttal report that I
17 wrote. It's a rebuttal of "Riddle Aggregates, LLC, Fair
18 Market Mineral Evaluation", written by Michael Stine of
19 Stantec Consulting Services.

20 MS. RAJ: Mr. Yoshida, can you please go to PDF
21 page 1 of Exhibit 9005-R?

22 To expedite things, I think for this part, we
23 can go ahead and just use the paper copies if that would
24 be okay with all parties?

25 THE COURT: That's fine.



1 MS. RAJ: Okay.

2 BY MS. RAJ:

3 Q Ms. Rentz, did you prepare this report?

4 A I did.

5 Q Did anyone assist you in preparing this report?

6 A Yes. One of my colleagues, Kelsey Zabrusky,
7 assisted with the layout of figures 2, 3, and 7. And
8 colleagues in my office helped with some proofreading.

9 Q And are the analyses, explanations, and opinions
10 expressed in the rebuttal report your own?

11 A Yes, they are.

12 MS. RAJ: Ms. Yoshida, you just go to PDF page 2
13 of Exhibit 9005-R? And this will be labeled as page 1 for
14 the hard copies.

15 BY MS. RAJ:

16 Q Ms. Rentz, is that your signature?

17 A That is my digital signature, yes.

18 Q Ms. Rentz, since preparing your report, has
19 anything come to your attention that you would like to
20 share with the Court?

21 A Yes. I'd like to make a few small corrections.
22 On the caption for figure 4, there's a citation and an
23 acronym that --

24 MS. RAJ: And just for the clarity for the
25 Court, this would be on the report number 13 and PDF page

1 14.

2 THE WITNESS: Thank you. Yes. The acronym
3 "USBC" is incorrect. It should be USCB for U.S. Census
4 Bureau. Then, on paragraphs 45 and 46, I think --

5 MS. RAJ: This would be on page 19 of the
6 printed-out copy and page 20 of the PDF copy.

7 THE WITNESS: There, at the last number in 45,
8 it says, \$20.875, and that should be per ton. And in 46,
9 there is a \$9.50 for a crusher run. That should be \$9.50
10 per ton.

11 And then, on the last page, I believe it's
12 paragraph number 60, unfortunately, I misspelled Mr.
13 Stine's name.

14 MS. RAJ: And that'd be on page 24 of the
15 printed report and on PDF page 25. Your Honor, Respondent
16 offers Exhibit 9005-R as Ms. Rentz's expert rebuttal
17 report.

18 MR. WHARTON: No objection, Your Honor.

19 THE COURT: 9005-R is admitted.

20 (Whereupon, the Document referred to as Exhibit
21 9005-R was received into evidence.)

22 MR. WHARTON: Your Honor, I note that it's
23 12:20. I think the Petitioner might request that we take
24 a break for lunch at this point. And we might have
25 extended cross-examination. It could last an hour or to



1 two. That's closer to two hours perhaps. So I think that
2 we're ahead of schedule. So I think that we can make this
3 work.

4 THE COURT: We'll go off the record for a
5 second, because I just want to check with Mr. -- you know
6 what I was going to ask you.

7 MR. PAVILONIS: Yes, Your Honor. We're fine
8 with taking a lunch break now if that's your preference.
9 We're fine continuing on if that's your preference. But
10 Mr. Freeman's expected here between 2 and 2:30, and I was
11 actually going to go and just double-check what his ETA
12 was.

13 MR. WHARTON: I think that if we take a lunch
14 break now, we can complete this by the time Mr. Freeman's
15 here.

16 THE COURT: So that's what the --

17 UNIDENTIFIED SPEAKER: Oh. We're not --

18 MR. PAVILONIS: Or no, but we'll take -- yeah.

19 UNIDENTIFIED SPEAKER: We'll take a break.

20 THE COURT: I think you mean take a break --

21 UNIDENTIFIED SPEAKER: Yeah, yeah.

22 MR. PAVILONIS: We'll take a break.

23 THE COURT: -- because you just said it was
24 going to take --

25 UNIDENTIFIED SPEAKER: Yes.

1 MR. PAVILONIS: Yes.

2 THE COURT: -- two hours and my math, that's
3 45 --

4 MR. PAVILONIS: Sorry. I might be doing the
5 math wrong in my head, Your Honor.

6 THE COURT: Okay. And I just --

7 MR. WHARTON: That clock tells me that we have
8 plenty of time.

9 MR. HALLER: That clock does not even move, but
10 it has been throwing me. That clock doesn't operate.

11 UNIDENTIFIED SPEAKER: Yeah.

12 MR. WHARTON: I'm sorry.

13 MR. HALLER: So if Your Honor wanted a briefer
14 lunch, that would be agreeable to us. It's, what, 12:21
15 right now by my clock. Till 1 then?

16 THE COURT: We can go a few minutes after that.
17 But I just was asking Mr. Haller -- I just didn't know
18 because I was trying to remember from yesterday -- I
19 believe you said you were no longer calling one of your
20 witnesses anymore?

21 MR. HALLER: It's Mr. Reed. And he was proposed
22 for tomorrow. He isn't coming. But Mr. Freeman is
23 coming. He had told us he should be here. He's commuting
24 in a little bit of a distance. 2 to 2:30 is what we're
25 kind of estimating.

1 THE COURT: I didn't know who you were planning
2 on doing -- what witness was going to be up next after Mr.
3 Freeman.

4 MR. HALLER: It depends, again, on timing --

5 THE COURT: Yeah.

6 MR. HALLER: -- but we were going to call Mr.
7 Groff if we have time. Even if we don't have time for a
8 full cross, we could qualify him and the report at least.

9 THE COURT: Okay. All right. Why don't we take
10 a recess to ten after 1?

11 THE CLERK: All rise.

12 (Whereupon, a recess was held from 12:20 p.m.
13 until 1:14 p.m.)

14 THE CLERK: All rise.

15 THE COURT: You may be seated.

16 MR. WHARTON: Good afternoon, Your Honor. May I
17 proceed?

18 THE COURT: Yes.

19 MR. WHARTON: Thank you.

20 CROSS-EXAMINATION

21 BY MR. WHARTON:

22 Q Good afternoon, Ms. Rentz.

23 A Mr. Wharton.

24 Q The first thing I'd like to talk about this
25 afternoon is revisiting something that you said during my



1 questions on your qualifications on voir dire. You were
2 talking about your resume, and I believe you said that in
3 your experience, you have used DCF analyses to evaluate --
4 and this is the term that I think you used -- you said the
5 mineral components of the land.

6 And when you talk about the mineral components, if
7 I'm phrasing -- is that what you recall saying?

8 A I don't recall.

9 Q Okay. If you said mineral component, are you
10 referring to the real property interest in the minerals
11 under the ground?

12 A I'm sorry. Could you repeat the question?

13 Q Are you referring -- when you said -- if you
14 used the term mineral component, are you referring to,
15 like, the real property interest in whatever mineral sits
16 on that land?

17 A The discounted cash flow analysis in general?

18 Q When you use the discounted cash flow analysis
19 in your evaluation and valuation work, what interest in
20 real property are you valuing?

21 A To clarify, I would only use a discounted cash
22 flow analysis in valuation. There is no place for a DCF
23 in an evaluation.

24 Q Okay. And if you use it in a valuation, not an
25 evaluation, then what interest would you be valuing?



1 A It depends on the type of analysis -- if you're
2 valuing the working interest or the nonworking interest of
3 a mineral property deposit, so --

4 Q Let's talk about working interest. Is that a
5 going concern business?

6 A I'm sorry. I don't understand.

7 Q Okay. It's fine. We can move on. Let's go
8 back to your report, Ms. Rentz. I want to start,
9 actually, at the end.

10 MR. WHARTON: So could we please pull up Exhibit
11 9005-R? Oh, can we switch control, please? Thank you.
12 And I would like to start at report page 24, which is PDF
13 page 25, if we can get it up. Thank you, Ms. Orona.

14 BY MR. WHARTON:

15 Q Ms. Rentz, looking at this page of your report,
16 I see your conclusions listed. Is that correct? That's
17 correct. The first conclusion that you list is in
18 paragraph 60 of the report. And your conclusion there is
19 that there's a mismatch between reported production
20 quantities as reported by the Alabama Department of Labor,
21 and purported demand as included in Mr. Stine's report and
22 as pulled from the DODGE Construction Network. Is that
23 your conclusion?

24 A I see that in paragraph 60, yes.

25 Q And I believe at the beginning of that



1 paragraph, you deem that the most significant conclusion
2 of your report?

3 A Yes.

4 Q So let's start with that one, then. And I'd
5 like to specifically look at the demand side of that
6 mismatch, as you call it. You would agree, Ms. Rentz,
7 that the change in population in a market area is critical
8 to establishing the demand present or forecasted in the
9 area?

10 A I would agree that population change is
11 critical, yes.

12 Q You would also agree that the actual reported
13 county numbers for new housing starts are a more accurate
14 indicator of the market demand for limestone construction
15 aggregates?

16 A A more accurate indicator than what?

17 Q Than, I believe, what you were comparing it to,
18 which was Mr. Stine's method of -- what you deem to be Mr.
19 Stine's method of calculating demand.

20 A So you're asking if the county housing starts
21 are more accurate indicator of demand?

22 Q Than what Mr. Stine used.

23 A I don't know. I haven't looked at those
24 numbers.

25 MR. WHARTON: Ms. Orona, can we turn to PDF page

1 14 of Ms. Rentz's report, specifically looking at
2 paragraph 31.

3 BY MR. WHARTON:

4 Q Ms. Rentz, it's on the screen; you're welcome to
5 look at the paper copy. I'm asking you to look at
6 paragraph 31. Please let me -- please review and let me
7 know when you're finished.

8 A Absolutely. I've reviewed it.

9 Q You're finished?

10 A Yes.

11 Q Thank you. Would you agree that your opinion is
12 that the actual reported county numbers for new housing
13 starts are a more accurate indicator of the market demand
14 for limestone construction aggregates than the enigmatic
15 market capture estimate -- and again, that refers to what
16 Mr. Stine calculated in his report?

17 A Yes. That is my opinion.

18 Q Thank you. So may I ask you a hypothetical
19 question about that opinion? If Petitioner or its experts
20 had used new housing starts to estimate demand for
21 limestone aggregate, you would agree that that would have
22 been an accurate way to do so?

23 A I would agree that it would have been more
24 accurate than what was in the report.

25 Q Okay. Have you ever used DODGE Construction



1 Network data before, Ms. Rentz?

2 A I have not.

3 Q You're familiar with DODGE Construction Network
4 in general?

5 A The name.

6 Q Just the name. In your reports, you referred to
7 DODGE as a "proprietary service black box".

8 A Correct.

9 Q And I think you used that term because you say
10 it's unknown what factors go into the demand quantities
11 presented.

12 A As explained in Mr. Stine's report, yes.

13 Q Ms. Rentz, are you aware that the parties
14 exchanged work files related to their expert reports?

15 A I assumed so. I did not know specifically.

16 Q Did you collect any files and turn them over to
17 Respondent to exchange to Petitioner's side when you
18 prepared your rebuttal report?

19 A I believe I did. My interview notes and
20 calculation (indiscernible).

21 Q I'll represent to you that Mr. Stine did the
22 same process. He submitted his work file for review by
23 Respondent. Did Respondent's counsel give you the
24 opportunity to examine Mr. Stine's work file as you your
25 rebuttal report?



1 A I did not see that work file, no.

2 Q Okay. Mr. Stine submitted a document that he
3 relied upon, and I'd like to take a look at it together.

4 MR. WHARTON: I'm holding a document I'd like to
5 mark as next in line for Petitioner's exhibits. The
6 number that I have is 7297-P. Handing a copy to counsel.

7 May I approach?

8 THE COURT: Yes.

9 MR. WHARTON: Ms. Orona, can we display that
10 document on the screen as well?

11 BY MR. WHARTON:

12 Q Ms. Rentz, I've just handed you a document
13 that's been marked for identification as Exhibit 7297-P.
14 Please take a look at this and let me know when you're
15 done.

16 A Okay.

17 Q Ms. Rentz, based on your answers to my questions
18 a minute ago, I assume you've never seen this document
19 before?

20 A That's correct.

21 Q Okay. But I'll represent to you that this was
22 part of Mr. Stine's work file. This is the raw
23 construction starts data provided by DODGE Construction
24 Network to Mr. Stine for use in his report.

25 So can we take a look at the third column that



1 goes all the way down over these five Excel pages? The
2 column header on the first page says, "project type
3 header". And you can take a look at all five pages, but
4 what type of project is represented for each of the
5 entries on all five of these pages of Excel data?

6 A It says residential.

7 Q Could you confirm for me that all five pages say
8 that the project type is residential?

9 A Yes.

10 Q So Ms. Rentz, I know that you haven't seen this
11 document before, so I'm not going to ask you to opine on
12 the specific document. But if, as a hypothetical, DODGE
13 Construction Network data was based, in whole or in part,
14 on residential housing starts, would that affect your
15 opinion as to whether Mr. Stine's estimate of total demand
16 for limestone aggregate was more or less accurate?

17 A Without knowing what other aspects go into the
18 DODGE demand number, I really can't speak to that.

19 Q Hypothetically, though, if you did understand
20 that raw housing data was used, it would be more accurate
21 than if raw housing data were not used?

22 A I would say that, yes, adding housing data would
23 increase accuracy.

24 Q Thank you.

25 A Uh-huh.



1 Q You were talking about DODGE as a proprietary
2 data network, right? And you said that you'd heard of it
3 generally, but you hadn't used it before and weren't fully
4 aware of it; is that right?

5 A Yes. That was --

6 Q And in your role in the federal government, do
7 you ever come across other proprietary sources of data
8 like that that other agencies might use or rely upon --

9 A Yes.

10 Q -- that you're not familiar with?

11 A Yes.

12 Q In your role in the federal government, when
13 doing evaluation and valuation work, do you often check
14 the underlying data behind those estimates from networks
15 like DODGE?

16 A As much as possible.

17 Q So if they were provided to you, you would, in
18 the course of your regular practice, review them?

19 A The data sources?

20 Q Correct.

21 A Yes. I would review data sources --

22 Q Okay.

23 A -- in conjunction with reviews.

24 Q Okay. The next topic I want to talk about is
25 market capture. So can we turn to page 7 of your report,

1 which is on PDF 8?

2 MR. WHARTON: Can we blow up paragraph 22?

3 Thank you, Ms. Orona.

4 BY MR. WHARTON:

5 Q Ms. Rentz, can you read paragraph 22 on this
6 page and let me know when you're finished?

7 A Out loud?

8 Q I'm sorry?

9 A Did you want me to read it out loud?

10 Q No. You don't need to read it out loud.

11 A Okay.

12 Q Just let me know when you're when you finish
13 reading it to yourself.

14 A Okay.

15 Q Okay. You would agree, Ms. Rentz, with the
16 proposition that it would be more accurate, in an
17 analysis, to use road miles traveled rather than a flat
18 circle, to measure market distances?

19 A I would agree with that.

20 Q Okay. I want to talk about how you think Mr.
21 Stine calculated market capture.

22 MR. WHARTON: Can we blow up paragraph 23
23 immediately below this one?

24 BY MR. WHARTON:

25 Q So in paragraph 23, you state that Mr. Stine, to



1 calculate the distances between the subject property and
2 market areas, he dropped a pin in the center of the
3 subject property and drew flat circles 25 and 50 miles
4 wide as the crow flies. Is that an accurate
5 representation of your opinion?

6 A Yes.

7 Q And for that, you cite to section 7.3.1 of Mr.
8 Stine's report.

9 A Yes.

10 MR. WHARTON: Ms. Orona, can we leave up this
11 page of Ms. Rentz's report, but also pull up Mr. Stine's
12 report, which is exhibit 7206-P. And I'm looking to go to
13 page 16 of the report, which is PDF page 22. And I know
14 that we're having trouble blowing up, side by side as it
15 is here, but if we could look at the bottom of the page on
16 that page of Mr. Stine's report, that's good enough for me
17 right now.

18 BY MR. WHARTON:

19 Q Ms. Rentz, can you see that on the screen?

20 A I can.

21 Q Okay. I want to look at the first sentence of
22 the narrative under figure 5, starting with "Stantec
23 identified". And if you could read that to yourself and
24 let me when you're done.

25 A I'm done.



1 Q Okay. Mr. Stine identified the number of
2 existing quarries within 25- and 50-mile radii from the
3 property using satellite mapping tools, correct?

4 A That's what his report states, yes.

5 Q And then based on competitive location analysis
6 and accessibility, the team estimated the percentage of
7 each county's demand that could be realistically served by
8 the quarry; is that accurate?

9 A Yes.

10 Q When we look back at your paragraph 23 on the
11 left-hand side of the screen, your paragraph 23 says that
12 Mr. Stine used 25- and 50-mile circles to calculate
13 distances between the subject property and market areas,
14 correct?

15 A Yes.

16 Q And your contention is that it's more
17 appropriate to do that using road miles?

18 A Yes.

19 Q Let's look again at Mr. Stine's report,
20 immediately below that paragraph we were just looking at.
21 This will be table 2 on page 16 of the report, pdf 22.
22 Can you take a look at table 2, Ms. Rentz, and let me know
23 when you finish looking at it?

24 A I see it.

25 Q Figure 2 is titled "Estimated Market Capture by



1 County"?

2 A That's correct.

3 Q And there are four columns in that table?

4 A Yes.

5 Q First one is the state, correct?

6 A Yes.

7 Q Second column is the county?

8 A Yes.

9 Q The third column is the assigned market capture
10 percentage as estimated by Mr. Stine and his team?

11 A Yes.

12 Q And the last column is road miles to county?

13 A Correct.

14 Q The first county on this list is Marshall
15 County, correct?

16 A That's correct.

17 Q Just looking at that last column next to
18 Marshall County, you can see -- it appears that the Riddle
19 property is four road miles from the Marshall County --
20 from Marshall County, right?

21 A Right.

22 Q Okay. The second county on the list is Morgan
23 County. You're aware, aren't you, Ms. Rentz, that the
24 subject property is located in Morgan County?

25 A I am.



1 Q Okay. And so the last column says that it is 0
2 road miles from the property to Morgan County, right?

3 A Correct.

4 Q Okay. In fact -- and you can count this up; I'm
5 doing it right now in my head again -- there are 12
6 counties listed on table 2; is that accurate?

7 A That is accurate.

8 Q And each county has a road mileage assigned
9 between the Riddle property and the county?

10 A It does.

11 Q And each is also assigned a market capture
12 percentage?

13 A Yes.

14 Q So the counties at the -- in fact, the table is
15 sorted by market capture percentage, right -- if you look
16 at it?

17 A That's correct.

18 Q So at the top of the table, higher market
19 capture -- at the bottom of the table, lower market
20 capture. I want to start at the bottom of the table. I
21 count five counties at the bottom that have been assigned
22 a 0 percent market capture rate.

23 A That appears correct, yes.

24 Q Those are Cherokee County, which is 60 road
25 miles from the Riddle property, correct?

1 A Yes.

2 Q DeKalb County, which is 41 road miles from the
3 Riddle property?

4 A Yes.

5 Q Etowah County, which is 32 miles from the Riddle
6 property?

7 A Yes.

8 Q Jackson County, which is 36 road miles from the
9 Riddle property?

10 A Yes.

11 Q And St. Clair County, which is 49 road miles
12 from the Riddle property?

13 A Correct.

14 Q The other seven counties on the list are all 35
15 or less road miles from the Riddle property, correct?

16 A That's correct.

17 Q I want to turn to page 17 of Mr. Stine's report,
18 which is PDF 23. And I just want to look at the paragraph
19 at the top and the map below it if we can.

20 MR. WHARTON: We can blow it up a little bit.

21 We just want to keep the whole map.

22 BY MR. WHARTON:

23 Q Can you see that all right on the screen, Ms.
24 Rentz?

25 A Yes.



1 MR. WHARTON: Thank you.

2 BY MR. WHARTON:

3 Q The paragraph here at the top of the page
4 starting with "Marshall County" -- could you read that and
5 let me know when you finish reading it to yourself?
6 You're done?

7 A Yes.

8 Q So this paragraph here is a narrative
9 description of the market capture percentages that Mr.
10 Stine used for counties with a nonzero market capture from
11 the table that we just looked at; is that right?

12 A That's correct.

13 Q Mr. Stine modeled a quarry on the Riddle
14 property taking 20 percent of the Marshall County demand.

15 A That's correct.

16 Q And if you look at the map on page 17 of Mr.
17 Stine's report, which is PDF 23, it shows that Marshall
18 County has two black dots; is that right?

19 A That is correct.

20 Q And those black dots represent existing quarries
21 as of the date of valuation.

22 A According to his figure, yes.

23 Q Okay. Mr. Stine modeled the quarry on the
24 Riddle property taking 15 percent of Morgan County demand.

25 A That's correct.

1 Q And if I'm counting my black dots right again, a
2 quarry on the Riddle property would have been the fifth
3 quarry in Morgan County in 2017.

4 A I believe that -- in Morgan County, you said?
5 Yes.

6 Q Yes. Is that correct?

7 A That's correct.

8 Q Thank you. Mr. Stine modeled a quarry on the
9 Riddle property taking ten percent of demand in Cullman
10 County?

11 A Yes.

12 Q That has one existing quarry as of the date of
13 value; is that right?

14 A Yes.

15 Q And taking ten percent of the demand in Madison
16 County, just north of the subject property?

17 A Yes.

18 Q That has multiple existing quarries; I believe
19 it's four quarries existing as of the date of value.

20 A I believe that's correct.

21 Q Okay. Oh. As noted in the narrative in that
22 paragraph, right, Cullman and Madison Counties have
23 moderate proximity to the subject property?

24 A Yes. That's what the paragraph says.

25 Q 22 road miles to Cullman County?

1 A I would have to reference the table again, but I
2 believe that's correct.

3 Q I believe it's in the paragraph.

4 A Oh, the parenthetical. Yes, I see.

5 Q And 12 road miles from the subject property to
6 Madison County?

7 A Yes.

8 Q According to the narrative, Cullman and Madison
9 County also had balanced competitive landscapes.

10 A According to his narrative.

11 MS. RAJ: Your Honor, may we ask a clarifying
12 question for the record?

13 THE COURT: Yes.

14 MS. RAJ: Is Ms. Rentz being asked if there's
15 four quarries listed on the map for Madison County on this
16 map that she sees on the exhibit? Just to clarify for the
17 record.

18 MR. WHARTON: Yes. That's the question that I
19 was intending to ask Ms. Rentz.

20 BY MR. WHARTON:

21 Q Ms. Rentz, was that the question that you were
22 intending to answer?

23 A The number of dots on the county on the figure.

24 Q On the figure -- we're looking at this map
25 together, and we each saw four dots on there.

1 A Yes.

2 Q Okay. Thank you.

3 MR. WHARTON: Does that clarify? Thank you.

4 BY MR. WHARTON:

5 Q I just want to -- last point on this, Mr. Stine
6 modeled a quarry on the Riddle property taking five
7 percent of demand in each of the Blount, Lawrence,
8 Limestone Counties, correct?

9 A Limestone, five percent; Lawrence, five
10 percent -- yes. That's what's listed at the --

11 Q Okay.

12 A -- figure.

13 Q And that was based on greater distance from the
14 subject property?

15 A I don't know.

16 Q According to Mr. Stine's report?

17 A I believe that -- let's see. Yes. That's what
18 it says.

19 Q Okay. My question for you, Ms. Rentz -- your
20 criticism of Mr. Stine says that he failed to account for
21 the road miles traveled to relevant market centers. We've
22 been talking about road miles for the last ten minutes
23 now, based entirely on Mr. Stine's reference to them. Did
24 Mr. Stine fail to account for road miles from the subject
25 property to other market centers?

1 A One of the issues that I had with the road mile
2 calculations presented was that they were to the County
3 border, not necessarily to the population centers, and --

4 Q Each mine within the market area would have to
5 travel the same roads within each of those counties to
6 access the same projects to sell limestone aggregate to,
7 wouldn't they?

8 A Not necessarily, if they were on different sides
9 of the county --

10 Q Right.

11 A -- or going to different population centers.

12 Q But the distance to the county, right, tells you
13 how far it takes to get there. And then within that
14 county, you might have to travel to certain projects.
15 Correct?

16 A Yes.

17 Q Okay. So did Mr. Stine's analysis fail to
18 account for that?

19 A I believe it could have been more nuanced, yes.

20 Q Okay. Ms. Rentz, I believe your report noted in
21 several locations that the areas of highest population
22 growth in the area surrounding the Riddle property is in
23 Madison County. Would you say that's a fair
24 characterization of your report?

25 A I believe that's correct.

1 Q Okay. But I would also note that you noted that
2 Limestone County is experiencing a high rate of population
3 growth relative to its prior population, right?

4 A I believe that's correct, yes.

5 Q Okay. And in fact, that characteristic, right,
6 that population growth characteristic -- that gets to the
7 path of development of urban areas like Huntsville as they
8 grow out from the city center toward the suburbs and then
9 the exurbs, right?

10 A Yes.

11 Q And you would expect, in your experience,
12 construction projects to take place more within that path
13 of development than in areas with no growth of population,
14 correct?

15 A Yes.

16 Q Okay. And you would also expect that if a city
17 center itself is not growing, but it's flat -- even with a
18 high population, there's likely to be more projects within
19 higher-growth areas than there are within that stagnant
20 city center, correct?

21 A I'm sorry. Could you --

22 Q Yeah.

23 A -- rephrase the question?

24 Q So aggregates are used where construction
25 projects are, right?

1 A Yes.

2 Q Okay. So construction projects happen where
3 people are moving?

4 A Often.

5 Q So you build more roads to get to places?

6 A Generally, yes.

7 Q You build more stores; you build more schools?

8 A There's greater building construction needs,
9 yes.

10 Q You build more parking lots?

11 A Yes.

12 Q All those things use construction aggregate?

13 A Correct.

14 Q Those building activities don't happen as often
15 where growth is flat?

16 A That is correct.

17 Q Okay. I do want to take a step back at this
18 point and just clarify one thing I think we've been
19 talking about. We've talked about, in my mind, two
20 separate issues so far related to the demand estimate from
21 Mr. Stine's report, right? First, we talked about how Mr.
22 Stine calculated the total demand in each of these
23 counties, right?

24 A I believe so, yes.

25 Q We were talking about the housing permit data



1 question, right, and that gets to how much limestone is
2 used in each of the specific county areas?

3 A Right.

4 Q Okay. You'd agree with me, Ms. Rentz, though,
5 that the second issue that we were just talking about,
6 this market capture percentage -- that's how a quarry like
7 one that might exist on the Riddle property would capture
8 that total demand, right?

9 A I'm not sure what you mean.

10 Q Well, that market capture percentage -- I think
11 you took issue with that in several places in your report.
12 Is that a fair characterization?

13 A That was one of the issues I identified, yes.

14 Q Correct. So I want to highlight that there's
15 two steps to this, would you agree? The first step is to
16 take the total amount of demand in the area, right? And
17 then the second would be to say how much of that total
18 demand could an operation capture, right -- from the
19 market?

20 A That's one way to do it, yes.

21 Q Yeah. Okay. So again, I just want to be
22 clear -- two parts to this, right? I don't want to mix up
23 that when we talk about, like, the market capture
24 percentage, that that's going to be the total demand for
25 limestone use in the area, right?

1 A Well, I think my issue was, is that the market
2 capture percentage didn't necessarily or clearly address
3 all of the aspects of demand and what could be expected.

4 Q I would agree with that. And so I want to be
5 clear, though. We're talking about two different
6 analytical framework. We're talking about estimating the
7 total demand in the area, and I think you agreed with that
8 as an initial step. And then also carving off a piece of
9 it, that in market -- or sorry, excuse me -- a quarry
10 might be expected to capture from the market?

11 A That's not the way I would go about it. But
12 yes --

13 Q Okay.

14 A -- that is one way to do it.

15 Q Let me ask you this. Your report doesn't
16 present an alternative way to calculate demand, that a
17 quarry on the Riddle property would be able to figure out
18 how much demand it can capture?

19 A No. I did not.

20 Q Okay. When you do review work for the appraisal
21 evaluation services office, do you often find that market
22 or demand studies maybe don't pass muster based on the
23 standards you're reviewing them under?

24 A I would always offer critical constructive
25 feedback to anyone who submitted a report to review.



1 Q Do you offer an alternative way to do it?

2 A Sometimes.

3 Q Okay. Did you do so in this case?

4 A I did not.

5 Q Okay. Let's take a look at table five of your
6 report, which is on page 21, PDF 22. I just want to
7 confirm -- so this is the reported production by quarry
8 for -- production data from 2018 and 2019?

9 A Correct.

10 Q And here, I want to get your thoughts. When
11 we're talking about production from each of these
12 quarries, we're really talking about how many tons of
13 aggregate each quarry sold into the market?

14 A I believe this was the producer reporting their
15 production.

16 Q Right. But if a quarry had stockpiles, right,
17 they wouldn't necessarily get reported onto production if
18 those hadn't been sold into the market yet?

19 A Yes.

20 Q We're really talking here about sales.

21 A You'd have to talk to the quarry owners as to
22 what they report.

23 Q When you view this data, do you use it as a
24 proxy for the supply of limestone aggregate, or as a proxy
25 for the demand of limestone aggregate?



1 A In this particular case, I would say that I used
2 it for a discussion of how much each quarry was producing
3 and then as a total county production.

4 Q And so if each quarry is producing that much,
5 that's supply, right?

6 A Yes.

7 Q Okay. I think we're on the same page.

8 MR. WHARTON: I want to focus on the 2018
9 production column here, because I don't want to mess up
10 the numbers and put the wrong things. So if we just focus
11 on that one -- don't worry about the other data at this
12 point.

13 BY MR. WHARTON:

14 Q I'm looking at the top entry, the top row of the
15 table. Madison Materials Summit Quarry, its 2018
16 production was over 479,000 tons of aggregate, right?

17 A Yes.

18 Q Okay. I don't want or need you to do this
19 calculation, just bear with me. The 19 quarries that are
20 on this table, you can tell -- I mean, several of them
21 sold over a million tons -- they collectively sold
22 millions of tons of limestone in 2018, right? Okay. So
23 collectively, you could say that limestone supplied in the
24 region was several million tons?

25 A Correct.

1 Q Okay. But Madison Materials Summit, right, they
2 only took a small fraction of that market share.

3 A Of the total production in 2018 for the market
4 area.

5 Q Correct.

6 A Right.

7 Q Yeah. So you'd agree. Some suppliers took more
8 than Madison Materials Summit, right?

9 A They all have different production numbers, yes.

10 Q Yeah. Okay. But they all took a slice of the
11 total demand for aggregate in the region?

12 A They supplied some of the production; that
13 doesn't speak to the demand in this table.

14 Q So again, when we're looking at an analysis, you
15 would agree that determining total market demand in the
16 area is a necessary step in the market analysis, right?

17 A Yes.

18 Q Okay. And you would also agree that determining
19 the share of the market that that entrant would command is
20 also a separate step from that?

21 A Right.

22 Q Okay. But both steps are necessary to
23 determining a credible result if you're going to do the
24 first.

25 A Supply and demand --

1 Q Yep.

2 A -- are both critical to the analysis, yes.

3 Q All right. Let's turn to supply now. I think
4 we're on the same page. I want to turn to table three of
5 your report, which is on page 17, PDF 18. We talked about
6 Alabama Department of Labor production data a few minutes
7 ago, but that was separated out by quarry. This is by
8 county, correct?

9 A Yes.

10 Q Okay.

11 A It was a sum of each of those quarry totals in
12 each county.

13 Q Okay. But this data extends from 2014 to 2018?

14 A Yes.

15 Q Okay. And I want to verify with you. The
16 number in each cell, for each year, for each county,
17 right, correspond to how many tons of aggregate were
18 produced in each county in each year. Is that your
19 understanding of the data?

20 A Yes.

21 Q I know you said I had to go back and ask them,
22 but I don't have time to do that, so -- okay. Let's look
23 at Morgan County for 2014. 1,782,621 tons were produced
24 in Morgan County in 2014?

25 A Yes.



1 Q Okay. This table does not tell us how many tons
2 of aggregate were used in Morgan County in 2014.

3 A No.

4 Q Okay. Limestone is typically used pretty close
5 to where it's produced, though, right?

6 A I believe I discussed that in the transportation
7 section, yes.

8 Q I agree with that, too. I think based on your
9 conversations with multiple producers, the maximum travel
10 distance they usually sell product to is up to 50 miles?

11 A Yes.

12 Q Okay. I want to take a look at, now, your
13 figure 2, which is on page 9, PDF page 10 of your report.
14 We talked about your GIS experience earlier; it looks good
15 on this page. This is a map of the Riddle property shown
16 with travel distances of 25 and 50 road miles.

17 A Correct.

18 Q Okay. The Riddle property here is shown as the
19 purple dot in the middle of the map?

20 A Yes.

21 Q And around that dot, there's light blue shading,
22 right?

23 A Correct.

24 Q And that would be the area within 25 road miles
25 of the Riddle property?

1 A Correct.

2 Q And then there's a yellow line that extends
3 further than the blue shading, and that would be the line
4 that's 50 road miles from the Riddle property.

5 A Correct.

6 Q That yellow line -- that's what I want to look
7 at first, okay? That line extends way outside Morgan
8 County?

9 A Yes.

10 Q In fact, you can see the Morgan County
11 boundaries drawn in teal around the Riddle property,
12 right?

13 A Correct.

14 Q And the 50-mile road miles doesn't touch any of
15 the boundaries of Morgan County; it goes way beyond them.

16 A It does.

17 Q So if a quarry at the Riddle property could sell
18 within 50 miles, it theoretically could sell to multiple
19 counties, not just one, right?

20 A I'm sorry?

21 Q If a quarry at the Riddle property could sell
22 its product up to 50 miles away, it can sell its product
23 into multiple counties, right -- not just the one that
24 it's in?

25 A If their established producer travel distance

1 was --

2 Q Right.

3 A -- 50 miles.

4 Q If there are competitors, they might have
5 delivered price advantages in different spots, right?

6 A Theoretically.

7 Q Theoretically, right? My broader point is not
8 all aggregate produced in a quarry in a particular county
9 is going to be used in that county.

10 A Correct.

11 Q Okay.

12 A Let's take a look at another of your tables.
13 This is the new building permits table, table 2. It's on
14 page 14 of your report, PDF 15. I want to look at two
15 particular counties on this table, and they're, helpfully,
16 the two counties that you put in bold on the table. Those
17 are Madison County and Morgan County.

18 Madison County -- well, take a look at those
19 numbers, please, and let me know when you're finished
20 comparing them.

21 A Okay.

22 Q I think you'd agree with me that Madison County
23 consistently has more than ten times more housing permits
24 issued than Morgan County, right?

25 A Madison County is the largest population center,

1 so --

2 Q And they're issuing more building permits than
3 Morgan County?

4 A Yes. They are.

5 Q And I think we can compare them up here. In
6 2014, Madison County issued 1,765 building permits, right?

7 A That's correct.

8 Q Morgan County issued 136?

9 A Yes.

10 Q 1765 is ten times more -- is more than ten times
11 more than 136, right?

12 A It is exponentially larger, yes.

13 Q Okay. So same thing in 2015?

14 A Correct.

15 Q 2016?

16 A Yes.

17 Q 2017?

18 A Yes.

19 Q 2018?

20 A Yes.

21 Q Okay. This table shows that Madison County is
22 issuing more building permits. And as you said earlier,
23 housing permits are correlated with aggregate demand.

24 A Often.

25 Q Okay. So it'd be fair to assume that Madison



1 County has a substantially higher demand for construction
2 aggregate than Morgan County?

3 A Per building permit, yes.

4 Q Thank you. Let's take a look at one more table.
5 This is table 3, which is on page 17, PDF 18. We were
6 just on this table, and you bolded the relevant counties
7 to look at again -- Madison and Morgan County, right?
8 Let's compare, between those two counties, the amount of
9 limestone produced by each between 2014 and 2018, and when
10 you're done looking at the numbers let me know.

11 A Yes.

12 Q Okay. Here, do you agree with me that the
13 amount of stone produced in Madison County is generally
14 larger than the amount produced in Morgan County?

15 A Generally.

16 Q But not, like, ten times larger.

17 A No.

18 Q And in fact, in 2016, Morgan County produced
19 more stone than Madison County?

20 A That's what they reported, yes.

21 Q And in 2017, the same thing?

22 A Correct.

23 Q So let me ask a question. If demand for
24 limestone aggregate is ten times higher in two neighboring
25 counties like Madison County and Morgan County, but

1 production of limestone in those counties is almost equal,
2 then could you go on and assume that some aggregate
3 produced in Morgan County is getting sold into Madison
4 County?

5 A Yes. That's safe to assume.

6 Q We've talked about demand and supply; let's put
7 them together. I want to look at paragraph 50 of your
8 report, which is on page 20, PDF 21. So take a look at
9 this paragraph and let me know when you're done. You talk
10 about extant operating quarries in 2017. I want to ask a
11 few questions about that.

12 The Stine report had a date of value in December
13 of 2017; is that right?

14 A Correct.

15 Q And your opinion, in paragraph 50, is that
16 extant operating quarries in that year would be able to
17 meet demand at that time?

18 A Based on my analysis, yes.

19 Q I just want to make sure. Because if we Zoom
20 back out from paragraph 50, and look at paragraphs 51 and
21 52, we start talking about 2018 and 2019 data, right?

22 A Yes.

23 Q I think that's because -- and if you can
24 confirm -- that in Mr. Stine's analysis, a quarry on the
25 Riddle property wouldn't have started producing limestone

1 until 2019.

2 A Right.

3 Q Okay.

4 MR. WHARTON: Let's zoom back out. I want to
5 look at paragraph 53, which extends on to the next page,
6 so if we can get all that, that would be good.

7 BY MR. WHARTON:

8 Q Because the beginning of paragraph 53, you're
9 talking about 2018 and 2019 data again. But by the end of
10 paragraph 53, you're talking about 2017 prices and 2017
11 production, right?

12 A Correct.

13 Q Okay. And in paragraph 53 --

14 MR. WHARTON: I'm not seeing the end of
15 paragraph 53. There we go. That's it. The top of the
16 page on the right-hand side.

17 BY MR. WHARTON:

18 Q So at the end of that paragraph, you talk about
19 a discussion you had with Scott Langford?

20 A Yes.

21 Q And he's the owner of the CA Langford quarry?

22 A That's my understanding, yes.

23 Q It's located down in Guntersville, Alabama?

24 A Correct.

25 Q And your report, in this -- you say that CA



1 Langford quarry -- that Mr. Langford told you that the CA
2 quarry was sitting on inventory in 2017 and had product
3 stockpiled due to greater production than sales demand at
4 that time?

5 A Correct.

6 Q Just want to ask, Ms. Rentz -- in your opinion,
7 is the relevant analysis here to look at what was
8 available in 2017 or 2019?

9 A I think both are relevant. The data evaluation
10 and the report was 2017, looking at the information that
11 would be available to a market analyst in 2017. And then
12 to give context to the production data, I included up
13 through 2019 --

14 Q Okay.

15 A -- which is when the quarter would begin --

16 Q If --

17 A -- reporting production.

18 Q -- if CA Langford had stockpiles in 2017, would
19 those stockpiles be relevant to the production that was
20 taking place in 2019?

21 A I don't know.

22 Q Okay. Two years is a long time.

23 A It is.

24 Q For a stockpile that can just go out the door,
25 right?

1 A Depends on what's stockpiled, I suppose.

2 Q Yeah. So it's your testimony that Mr. Scott
3 Langford and the CA Langford quarry were sitting on
4 inventory in 2017, that they had product stockpiled due to
5 greater production than sales demand at that time?

6 A Yes. He had indicated that they were still
7 recovering production-wise from the recession and the
8 decrease in building production demand.

9 Q Okay.

10 MR. WHARTON: I'd like to have another exhibit
11 marked as the next in line, which I believe is 7298-P.

12 THE COURT: And before you do that, I don't
13 think you ever offered the other exhibit.

14 MR. WHARTON: I wasn't sure if it was
15 appropriate to offer it, Your Honor, given that it was
16 just documents relied upon by the expert. I can move to
17 have Exhibit 7297 admitted.

18 MS. RAJ: Your Honor, if they move to have that
19 exhibit admitted, I would object as they haven't laid a
20 foundation for it. Ms. Rentz had testified that she had
21 never seen it before.

22 THE COURT: Okay.

23 MR. WHARTON: Yeah.

24 THE COURT: I just wanted to make sure you were
25 not offering it since you didn't clarify --



1 MR. WHARTON: I was offering it to impeach her
2 testimony that the data was --

3 THE COURT: But you didn't say for impeachment
4 purposes --

5 MR. WHARTON: Yeah.

6 THE COURT: -- so I was just clarifying. Thank
7 you.

8 MR. WHARTON: Understood. Thank you. This one,
9 I think, I will end up moving in. Either way, I'm holding
10 in my hand, but I'd like to have marked for identification
11 as 7298-P. Handing a copy to counsel.

12 May I approach?

13 THE COURT: (No audible response)

14 BY MR. WHARTON:

15 Q Ms. Rentz, I just handed you what's been marked
16 for identification as exhibit 7298-P. Please take a look
17 and let me know when you're ready.

18 A I will. Okay.

19 Q Do you recognize this document?

20 A I do.

21 Q What is it?

22 A It is a copy of the notes that I submitted with
23 my report.

24 Q Did you prepare these notes yourself?

25 A I did.



1 Q Did you make them immediately after the
2 interview that's reflected in the notes?

3 A I did.

4 Q At the bottom of each of the pages, there's a
5 page number footer. I'm going to direct you to page 3 out
6 of 4.

7 A Yes.

8 Q And at the top of that page, there's a date,
9 August 13, 2025?

10 A Yes.

11 Q The next line says, CA Langford Co., Inc.
12 Quarry?

13 A Yes.

14 Q And then there's a series of bullets. I want to
15 direct you about three-quarters of the way down the
16 page -- there's a bullet that starts "slow business"?

17 A Yes.

18 Q In these notes, didn't you write "slow business
19 from 2011-2013 so Langford was sitting on a lot of
20 produced inventory in 2015"?

21 A Yes.

22 Q And in fact, you didn't write anything about CA
23 Langford sitting on any inventory in 2017?

24 A I did not.

25 MR. WHARTON: Okay. At this point, Your Honor,

1 Petitioner moves Exhibit 7298-P into evidence.

2 MS. RAJ: Respondent would not object to
3 admitting it as the fact that these are, Ms. Rentz's
4 notes; however, we do object to this if they're being
5 admitted as to the truth of the matter asserted within the
6 statements regarding conversations in her notes, under
7 hearsay.

8 MR. WHARTON: They meet a hearsay exception for
9 present sense impression under Federal Rule of Evidence
10 803(1) She testified that they were recorded immediately
11 after her interviews.

12 THE COURT: 7298-P is admitted.

13 MR. WHARTON: Thank you.

14 BY MR. WHARTON:

15 Q I want to talk a little bit more about this
16 Scott Langford interview. Closer to the top of that page,
17 3 of 4 --

18 A Yes.

19 Q -- there's a bullet that starts off with "60-
20 mile radius". Can you review that and let me know when
21 you're done?

22 A Yes.

23 Q Also have you take a look at the next bullet; it
24 isn't too hard. It starts with "Majority.

25 A Yes.



1 Q I want to ask you some questions about these,
2 Ms. Rentz. I know you're not from Alabama, but are you
3 aware that Birmingham is over 70 road miles from CA
4 Langford's Guntersville location?

5 A That was my general sense, yes.

6 Q And Mr. Langford told you, right, that his
7 quarry sometimes gets a little into New Hope?

8 A Yes.

9 Q Okay. And are you aware that New Hope, which
10 you noted is north from the quarry, is still south of
11 Huntsville?

12 A Yes.

13 Q Okay. And in fact, the Riddle property is over
14 13 road miles closer to Madison County than the CA
15 Langford quarry is?

16 A I believe you that that is correct, yes.

17 Q Let's turn back to reconciling supply and
18 demand. I want to turn to page 22 of your report, which
19 is PDF 23. In paragraphs 55 and 56, -- please review
20 those real quick and let me know when you're finished.

21 A I'm sorry. You said 55 and 56?

22 Q 55 and 56, please.

23 A Okay.

24 Q Thank you.

25 A Yes.

1 Q Are you done?

2 A Yes.

3 Q Okay. You critique the Stine report for
4 conflating demand with potential market capture?

5 A Yes.

6 Q And you give an example of Marshall County
7 production there in paragraph 55 and ends in paragraph 56.

8 A Correct.

9 Q Here, you compare the 2018 total Marshall County
10 production to the Stantec DODGE report and the calculated
11 market penetration rate quantity, right?

12 A Right.

13 Q But again, I just want to make sure we're making
14 a fair comparison. So like we said before, a county's
15 specific production of limestone doesn't equate to its use
16 or demand for limestone, right?

17 A Not necessarily.

18 Q I think earlier, we were talking about how, in
19 counties like Madison and Morgan County, there's ten times
20 more demand for aggregate in Madison County, but the
21 production is nearly equal, right?

22 A That's what we discussed, yes.

23 Q Okay. And we reconciled that by saying quarries
24 in one county are selling aggregate into another county to
25 satisfy that county's demand. You said it was possible



1 because of the 50-road-mile ring, right?

2 A I believe that you pointed out that they could
3 travel --

4 Q Okay.

5 A -- 50 miles, and I agreed.

6 Q So in these two paragraphs, when you say that
7 Marshall County produced 783,571 tons of aggregate in
8 2018, we know that not all of that aggregate was used in
9 Marshall County.

10 A I have no idea where that aggregate was used.

11 Q Well, we just talked about the CA Langford
12 interview, right?

13 A Yes.

14 Q Scott Langford told you that the majority of
15 those sales were in Albertville and Boaz, right?

16 A His sales.

17 Q Yeah. And those cities are in Marshall County?

18 A Yes.

19 Q But he also told you that sales went up to New
20 Hope?

21 A Sometimes.

22 Q Which is just inside Madison County?

23 A That's correct.

24 Q And just as far south as Birmingham, right?

25 A Indeed.



1 Q And that's Jefferson and Shelby counties.

2 A Correct.

3 Q So when Marshall County produces 783,571 tons of
4 aggregate in a year, some of that's getting sold in other
5 counties.

6 A I would assume so.

7 Q Okay. But what Mr. Stine calculated with his
8 total demand in market capture was how much of the demand
9 in Marshall County a mine on Riddle property could
10 capture.

11 A Okay.

12 Q In fact, total demand in Marshall County in 2018
13 could have been far less than the 783,571 tons of
14 aggregate getting produced in Marshall County, given that
15 some of it was getting exported to other counties.

16 A It's possible.

17 Q Okay. Again, though, your report concludes that
18 in 2017, the market had enough extant quarries to supply
19 any demand that existed with additional supply from those
20 quarries.

21 A Based on the variability in their production
22 reports.

23 Q Okay. If the established producers could
24 already meet all market demand, then why did five new
25 quarries open in that market since 2017?



1 A I don't know.

2 Q I just want to direct you back to your field
3 notes.

4 MR. WHARTON: Can you pull that back up, Ms.
5 Orona? Oh, and go to, actually, to the first page of this
6 instead of the third page now. And I'm looking at the
7 heading that starts "North Alabama Materials Gurley
8 Quarry".

9 A Yes.

10 Q What date did that open, Ms. Rentz?

11 A They said it opened January 2022.

12 Q Okay. And in your field notes right below that,
13 you have some notes from the Gum Pond Quarry, correct?

14 A Yes.

15 Q Okay. You noted that it signed its lease in
16 August 2021.

17 A That is what the owner said, yes.

18 Q And it started production March of 2023?

19 A That's what they said, yes.

20 Q Gum Pond Quarry's production goal is 60,000 tons
21 per month?

22 A That was what they said, yes.

23 Q And that's 720,000 tons annually, correct?

24 A I believe that's correct, yes.

25 MR. WHARTON: No further questions at this time.



1 MS. RAJ: Your Honor, Mr. Jim Freeman is here,
2 and when there's appropriate time, can we ask to stop to
3 be able to take his testimony?

4 THE COURT: Well, I think this is perfect
5 timing.

6 MR. HALLER: Should we take about ten minutes?
7 He's down in the cafeteria, Your Honor.

8 THE COURT: Okay. Just let the trial clerk know
9 when you're -- when you're ready.

10 MR. HALLER: Thank you, Your Honor.

11 THE CLERK: All rise.

12 (Whereupon, a recess was held from 2:06 p.m.
13 until 2:17 p.m.)

14 THE CLERK: All rise.

15 THE COURT: Please be seated.

16 MR. PAVILONIS: Christopher Pavilonis for
17 Respondent, Your Honor. Respondent calls James Freeman.

18 THE COURT: If you could come up to the stand
19 and remain standing, and I'll have the trial clerk swear
20 you in.

21 MR. FREEMAN: Okay. Right here?

22 THE COURT: Yep. That's perfect.

23 JAMES FREEMAN, II

24 having been duly sworn, testified as follows:

25 THE CLERK: Please state your name.



1 THE WITNESS: I'm Jim Freeman. My formal name
2 is James E. Freeman, II.

3 THE CLERK: Thank you.

4 DIRECT EXAMINATION

5 BY MR. PAVILONIS:

6 Q Good afternoon, Mr. Freeman. My name is Chris
7 Pavilonis. I'm just going to be asking you a few
8 questions today, okay?

9 A Okay. Great.

10 Q Could you start by telling the Court just about
11 your educational background?

12 A So I went to high school in Marietta and
13 attended the University of Georgia after I graduated from
14 high school.

15 Q Okay. And what did you major in at the
16 University of Georgia?

17 A Banking and finance.

18 Q And can you please tell the Court what you
19 currently do for a living?

20 A So I'm a tractor dealer. I sell tractors, and
21 we repair them, and provide parts and service and other
22 kind of support for all kinds of equipment.

23 Q And are you familiar with an organization called
24 the Freeman Five, LLC?

25 A Yes, sir.



1 Q Can you just give us an idea of what that is,
2 the entity -- what it does?

3 A It's a real estate holding LLC that my dad set
4 up.

5 Q And who is your father?

6 A His name was James E. Freeman, I, or just James
7 E. Freeman, I guess, would be the first.

8 Q If I refer to him as Mr. Freeman, Sr., would
9 you --

10 A Yes, sir.

11 Q -- know that that's who I'm referring to?

12 A Yes, sir.

13 Q And is he still with us?

14 A No, sir. He passed away.

15 Q I'm sorry to hear that.

16 A Me, too.

17 Q Are you the executor of his estate?

18 A Yes, sir.

19 Q While Mr. Freeman, Sr., was alive, did you two
20 do any work together with the Freeman Five organization?

21 A So I mean, he and I did work together, over the
22 years, at all kinds of things, so --

23 Q Okay. Could you maybe, I guess, elaborate on
24 what his role was in the Freedom Five, LLC?

25 A Well, he was the creator, or the organizer, I



1 guess, how you call it, and then he served as manager for
2 it until he passed away.

3 Q And I think you mentioned earlier that it held
4 land?

5 A Yes, sir.

6 Q Who went about locating that land for
7 acquisition?

8 A He did.

9 Q And based just on your observations, how did he
10 go about doing that?

11 A I mean, people just knew my dad, and they would
12 come to him when they kind of were wanting to sell a piece
13 of property, or different real estate people knew that he
14 bought and sold land, so they would come to him as well.

15 Q And could you describe, a little bit, your
16 father's experience in real estate?

17 A So I mean, I was born in 1972, and as far as I
18 know, for all of my life, he owned real estate.

19 Q And could you give, just I guess for the Court,
20 an idea of a range of how many real estate transactions he
21 did over his life?

22 A I don't know exactly how many it would be, but I
23 think it was, say, over 50.

24 Q Okay. All right.

25 A I want to talk a little bit about some property



1 that was acquired by the Freeman Five, LLC in Morgan
2 County. The parties have stipulated that on May 8, 2006,
3 Freeman Five acquired about 2744 acres of real property
4 located in Morgan County from an individual named Jeff
5 Banks, III. Let me ask, are you familiar with an entity
6 called Longleaf Ventures?

7 A Yes.

8 Q Okay. And how are you familiar with Longleaf
9 Ventures?

10 A It was on a document that an attorney showed me.

11 Q And I'm also going to tell you that the parties
12 have stipulated that in March of 2016, Longleaf Ventures
13 made an offer to Freeman Five to purchase about 894 acres
14 of the 2,744 acres for approximately 2,500 an acre. Do
15 you remember who handled the negotiations for this offer
16 from Longleaf?

17 A You mean who handled it for us?

18 Q Well, yeah, we'll start with you. Do you know
19 on your end who was engaged in the discussions?

20 A For Freeman five, LLC, I believe it was my
21 father.

22 Q And do you know who handled the discussions for
23 Longleaf?

24 A I think they had a real estate agent involved in
25 it. A guy named David Duke or maybe Will Waller (ph.).



1 The two of them were partners that had approached us about
2 it.

3 Q Did you recall if you had any interactions with
4 Mr. Duke?

5 A I met him, sure.

6 Q And do you recall if your father had any
7 interactions with Mr. Duke?

8 A Yeah. Dad was the primary person -- his primary
9 contact.

10 Q And let me ask you, during 2016, to your
11 knowledge, was the Freeman Five entity under any type of
12 financial strain or duress?

13 A No.

14 Q And in 2017, was the Freeman Five, LLC, entity
15 under any type of financial strain or duress?

16 A No. Not that I'm aware of.

17 Q Were the property taxes paid on the land that
18 was owned by Freeman Five, LLC?

19 A I didn't pay the property taxes then personally,
20 but I believe they were all paid.

21 Q And were any of the properties in foreclosure?

22 A No. Not that I'm aware of.

23 Q Speaking to the properties, the 894 acres that I
24 mentioned to you earlier, did Mr. Freeman, Sr., ever visit
25 Morgan County to see those -- to see that property?



1 A I'm sure he did, yes, sir.

2 Q And was Freeman Five related in any way to
3 Longleaf?

4 A No.

5 Q Are you aware of the structure of the
6 transaction in which the property that was held by Freeman
7 Five eventually ended up with Quorum Holdings?

8 A I don't know exactly what you mean by when you
9 say am I aware of the structure of it. What do you mean?

10 Q I guess, do you know how the sale of the real
11 estate was structured?

12 A Well, based off of the documents that I was
13 shown, it was sold from Freeman Five, LLC, to Longleaf,
14 and then they handled anything else from there as far as
15 I'm aware of.

16 Q And when you say documents you were shown, who
17 showed those documents to you?

18 A Well, some of the attorneys showed them to me
19 when we were looking the other day. Yeah.

20 MR. PAVILONIS: Your Honor, may I have a moment
21 to confer?

22 THE COURT: Yes.

23 MR. PAVILONIS: Your Honor, no further
24 questions.

25 MR. NORMAN: Just a few questions, Your Honor.



CROSS-EXAMINATION

1

2 BY MR. NORMAN:

3 Q Good afternoon, Mr. Freeman. My name is Mac
4 Norman for the Taxpayer. Just a few questions, and we
5 will get you out of here pretty quickly. Just to confirm,
6 as far as your education experience, you don't have any
7 education or experience related to mining any sort of rock
8 or mineral, correct?

9 A Well, I picked up a lot of rocks as a kid, but
10 other than that, not really.

11 Q Fair enough. Fair enough. When you mentioned
12 earlier that you were shown certain documents by a lawyer,
13 were those documents that were shown to you by anyone at
14 this table here?

15 A Well, it was online, so I don't know who showed
16 them to us, so --

17 Q Was it recently?

18 A Yes, sir.

19 Q Okay. So you may not have known about these
20 documents back in 2017, perhaps?

21 A No, I mean, they look familiar.

22 Q You mentioned earlier a range of real estate
23 deals that your father might have been engaged in, and you
24 mentioned over 50. That was just a guess, correct?

25 A Well, I had been asked previously if it was a



1 number and we kind of come to the number that -- it was at
2 least 50-plus, or more than 50.

3 Q Understood.

4 A So far as I know.

5 MR. NORMAN: Just a moment to confer, Your
6 Honor? No further questions, Your Honor.

7 MR. PAVILONIS: Nothing further from Respondent.
8 We would ask that Mr. Freeman be released from his
9 subpoena.

10 THE COURT: Thank you for your testimony.
11 You're released from your subpoena.

12 THE WITNESS: Thank you very much, Your Honor.

13 THE COURT: We can go off the record for a
14 second.

15 (Off the record, 2:28 p.m. to 2:29 p.m.)

16 THE COURT: Okay. We'll go back on the record.

17 REDIRECT EXAMINATION

18 BY MS. RAJ:

19 Q Okay. Ms. Rentz, they asked you about housing
20 starts. How can you tell us about how you checked housing
21 data?

22 A I'm sorry. I can barely hear you.

23 Q They asked you about housing starts. Can you
24 tell us about how you checked housing data?

25 A Yes. I pulled information about each county and

1 the new residential housing permits that were -- excuse
2 me, for each of those counties in that market area.

3 Q And they also asked you about DOGE (sic). What
4 ability do you have to test DOGE (sic)?

5 A I think it's DODGE.

6 Q DODGE. Sorry.

7 A It's a subscription service is my understanding,
8 and we do not have a subscription for it. So it's not
9 accessible to me.

10 Q Okay.

11 MS. RAJ: And I'm going to ask Mr. Yoshida to
12 pull up exhibit 7206-P, at PDF page 73.

13 BY MS. RAJ:

14 Q So they had asked you a sentence from the Stine
15 report under figure 5, which is on a different page, but
16 it was regarding existing quarries. What do you think
17 about the existing quarries --

18 A Could you be --

19 Q -- as noted on here.

20 MS. RAJ: Mr. Yoshida, if you could highlight
21 the portion on the left that's in the green background,
22 because it's a very small table and hard to see.

23 BY MS. RAJ:

24 Q Can you tell us what you think about the
25 existing quarries in the area?

1 A In what aspect?

2 Q In the context of your review -- and their
3 impact.

4 A I'm sorry. I don't understand the question.

5 Q So they had specifically --

6 MS. RAJ: I guess, Mr. Yoshida, could you pull
7 up -- I'm sorry -- the same exhibit, 7206-P, at PDF 22?

8 BY MS. RAJ:

9 Q So on the right is page 22 from that report, and
10 they had asked you to read out the first sentence, which
11 was regarding existing quarries within the 25-, 50-mile
12 radius. It's a little hard to read. And I was just
13 wondering -- you were here yesterday when Mr. Stine
14 testified, correct?

15 A Yes.

16 Q Okay. And so you saw him discussing the chart
17 here on the left at page 73, which was of existing
18 quarries?

19 A Yes.

20 Q And I was just wondering, looking at all the
21 existing quarries in the area, what are your thoughts on
22 that and how that would have impacted your market
23 evaluation regarding a hypothetical quarry at the Riddle
24 location?

25 A In regards to the quarry distances and the

1 existing quarries in the area, I think that looking at the
2 road-mile distance for those quarries can give you a
3 better idea of the market reach for each of them, as
4 aggregate is such a strongly distance-controlled market.
5 And in these -- let's see. I'm sorry. I'm comparing the
6 two.

7 Q And what does that tell you, I guess, about the
8 market demand with these existing quarries?

9 A I'm sorry. I don't know what you mean.

10 Q That's fine. I'll move on. They had also
11 asked, as we discussed, about the road miles to county
12 from Stine's report.

13 A Correct.

14 Q What does this tell you about the miles to the
15 customer of a hypothetical quarry?

16 A Oh, it was distance to county versus distance to
17 the location of the demand center. It's just a more
18 nuanced evaluation of where the quarry is, as to getting
19 to major population centers, versus the county line.
20 Because it could very well be 10 miles to the county, but
21 then it might be 40 miles to the other side of the county,
22 where the demand might be. It would vary based on county.

23 Q What kind of transactions occur on the county
24 line?

25 A I don't know.

1 Q And what is your opinion on market capture?

2 A It's --

3 MR. WHARTON: I'm going to object. It calls for
4 a narrative. I mean, we're talking about a report. I did
5 some questioning about market capture, but I really think
6 the witness' thoughts on market capture are contained
7 within her direct report, and I don't know that we need to
8 be --

9 THE COURT: I'll allow the question.

10 THE WITNESS: Could you repeat the question?
11 I'm sorry.

12 BY MS. RAJ:

13 Q Yeah. What are your -- what is your opinion on
14 market capture?

15 A Market capture isn't a hypothetical evaluation
16 of the amount that you could sell if there are customers
17 depending on the amount that might be produced. But for
18 this particular market capture calculation, I think my
19 point in my report was that the road distance is one part
20 of it, or the distance is part of it, but the other
21 aspects are just unknown in the report, based on whatever
22 calculation factors come in from DODGE. It's just that
23 it's not clear.

24 MS. RAJ: And Mr. Yoshida, can you go ahead and
25 take down these current exhibits?



1 BY MS. RAJ:

2 Q So as part of your analysis on market capture,
3 who did you talk to for the case?

4 A I mean, I spoke with producers in the area and
5 analyzed the data that was available.

6 Q And for this area, where are the customers
7 located?

8 A For Morgan County?

9 Q In general, for a hypothetical quarry located at
10 the Riddle location, where would the customers be located?

11 A Generally, you're going to look at where the
12 building permits are, where the population growth is, and
13 compare that in relation to the distance you're going to
14 have to travel the limestone to get it to those customers,
15 to figure out how reasonable is it that they would sell to
16 those people.

17 MS. RAJ: Mr. Yoshida, can you pull up Exhibit
18 9005-R at PDF page 12, please?

19 BY MS. RAJ:

20 Q You were asked a question about Madison County
21 growth. What is the growth of Limestone County?

22 A Over this period of time, the 2014 to 2019,
23 Limestone County grew by more than ten percent.

24 Q And how much construction was there in Morgan
25 County?

1 A Construction?

2 Q Yeah. Construction in general or estimated
3 construction based on growth -- based on growth.

4 A I couldn't estimate based on -- the construction
5 in general, I could look at the change in population or
6 the change in the number of building permits.

7 Q Okay. So how much of a change in the number of
8 building permits were there in Morgan County?

9 A I would have to reference my report. I'm sorry.
10 I don't know off the top of my head.

11 Q You actually have your report in front of you,
12 correct?

13 A I do.

14 Q I believe it's on PDF page 15. So we had just
15 talked about the growth in Madison County. Now we're
16 looking at Morgan County.

17 A Okay.

18 Q So can you tell us about the growth in Morgan
19 County?

20 A I'm sorry. I'm on a different page. So Morgan
21 County had a growth -- or excuse me. There was an
22 increase in the number of building permits in 2016 and
23 then a decrease in 2017 and '18.

24 Q And based on that, about how much of that growth
25 and/or construction was in Huntsville?

1 A That, I don't know. The data granularity
2 doesn't say specifically.

3 Q Do you have any recollection from your review
4 and research or visits?

5 A Not off the top of my head. I'm sorry.

6 Q And do you recall about how far Huntsville is
7 from the Riddle property?

8 A Again, I'd have to look. I'm sorry. I don't
9 recall off the top of my head.

10 MS. RAJ: Okay. So Mr. Yoshida, can you pull
11 down that exhibit, please?

12 BY MS. RAJ:

13 Q What evidence is there of total demand in 2017?

14 A Total demand?

15 Q Yeah. They had asked you about demand in 2017.
16 When you're doing your review and creating your report,
17 what are you looking at to determine the demand in 2017?
18 What evidence is there?

19 A Oh, in the -- excuse me. In that case, I would,
20 again, go back to building permits and population change
21 as a proxy for demand in those areas.

22 Q And how was the market positioned to handle that
23 demand in 2017?

24 A Based on the amount that was produced at that
25 time, or based on the amount of -- I'm sorry. I don't --



1 Q Oh, yeah. So --

2 A -- I don't understand.

3 Q -- the existing market at that time, how was it
4 situated in terms of being able to handle the demand that
5 was present in 2017?

6 A Thank you. From what I could see and analyze in
7 this, the existing producers in 2017 were already able to
8 meet the demand in the area. The production quantities
9 increased, or varied, over time for each quarry, but the
10 variability more than accounted for the potential -- in
11 comparison to the amount that was going to theoretically
12 be produced from the subject property, they seemed to be
13 able to increase or decrease their production by that
14 amount over time.

15 Q And you were asked about presenting an
16 alternative in your reports when conducting a review of
17 other technical reports. Why didn't you present an
18 alternative here?

19 A That was not part of my scope. I was offering
20 review of this report, not presenting my own theories.

21 MS. RAJ: Ms. Yoshida, can you pull back up
22 exhibit 9005-R at pdf page 22, please? Which will be page
23 21 of the --

24 BY MS. RAJ:

25 Q Can you explain table five from your report?



1 A Yes. It's the production reported from the
2 quarries in the listed county areas, as well as the
3 operator of the quarry as was listed in Alabama Department
4 of Labor in 2017. And then it gives a percentage of the
5 county production that each quarry -- based on the county,
6 the amount of that production that each of these quarries
7 accounts for.

8 Q And you were asked about the Alabama Department
9 of Labor data. Can you tell us about the accuracy of the
10 Alabama Department of Labor data?

11 A To my understanding, it is reported by each
12 quarry operator to the state on a yearly basis.

13 MS. RAJ: Ms. Yoshida, can you turn to page PDF
14 at 10 of the same exhibit?

15 BY MS. RAJ:

16 Q Can you explain figure two from your report and
17 specifically your reasons for looking at both 25 and 50
18 miles?

19 A In this particular figure, I set a start
20 location at the proposed entrance for the theoretical
21 quarry on the property and then calculated a route
22 distance of 25 miles and then another of 50 miles to show
23 where, in relationship to those travel distances, the
24 other existing quarries were.

25 Q And how many competitors are located in the 50-

1 mile area?

2 A May I count? Within the -- I'm sorry. You
3 asked about the 25 distance, or the 50?

4 Q In the 50-mile area.

5 A Ah. 50.

6 Q How many other competitors are located in the
7 50-mile zone?

8 A 13.

9 MR. WHARTON: Can I ask for clarification if
10 that's within the 50-mile zone but outside 25 miles, or if
11 that's the total 50-mile?

12 MS. RAJ: I was asking for the total within both
13 25 and 50 -- the total amounts all within the yellow, not
14 exclusively between 25 and 50.

15 BY MS. RAJ:

16 Q Is that the question that you answered, Ms.
17 Rentz?

18 A I was answering the total number that I quickly
19 counted from this within the 50-mile road distance.

20 Q So you would have included, if we pull up the
21 chart, you would have included the ones that are located
22 in the blue zone?

23 A Correct.

24 Q Okay.

25 MS. RAJ: And can we pull up -- I believe it's

1 page -- PDF at, I want to say, 18.

2 BY MS. RAJ:

3 Q So they had asked you about the customers in new
4 construction. About how many quarries are servicing these
5 customers for their new construction?

6 A I'm sorry. Which --

7 Q Oh.

8 A -- location?

9 Q How many quarries are servicing these customers
10 for their new construction -- the customers of the
11 hypothetical Riddle quarry?

12 A As I don't know specifically what customers were
13 being served by each quarry, I couldn't speculate to that.

14 Q And can we turn to table 4 on PDF page 21?

15 A Pardon me.

16 Q I know they had asked you about table 4, and I
17 just want to see if there was anything you wanted to
18 explain about it.

19 MR. WHARTON: Objection. I never asked about
20 table 4. It's outside the scope of cross.

21 THE COURT: I believe that is correct.

22 MS. RAJ: Yeah. Apologies. I think I wrote the
23 wrong table down.

24 BY MS. RAJ:

25 Q Table 5 on 22. Do you want to elaborate

1 anything regarding table 5?

2 MR. WHARTON: Objection. Calls for a narrative.

3 THE COURT: The objection -- if you want to ask
4 a more focused question?

5 BY MS. RAJ:

6 Q I think we did already cover table 5 a bit
7 again, but I just wanted to see if there was anything that
8 you had, additional. But I will move on.

9 They did ask you on direct about the Langford
10 quarry?

11 A Yes.

12 Q How would the Langford quarry compete with the
13 hypothetical Riddle quarry?

14 A I don't know because I don't know what the -- I
15 don't know what customers the hypothetical quarry would be
16 aiming to serve. I don't know if those would overlap with
17 overlap with the Scott Langford quarry geographically.
18 They're in the same competition area. Specific customer
19 wise, that's difficult to determine because it's
20 hypothetical.

21 MS. RAJ: Thank you.

22 RE-CROSS-EXAMINATION

23 BY MR. WHARTON:

24 Q Ms. Rentz, counsel was asking you a question
25 about total building permit demand and also asking about

1 my questions about kind of an alternative analysis, right?

2 A Correct.

3 Q I had asked you on cross about if you did an
4 alternative analysis, and your answer was no. And counsel
5 asked you questions, well, why didn't you do one? And I
6 believe you said it wasn't within your scope?

7 A Correct.

8 Q Okay. But today, you're here, and I have you on
9 the stand for another couple questions. So I'd like to
10 ask you, let's say that you had a total demand estimate
11 for the counties in the market area that the Riddle quarry
12 would have served. Are you with me on that?

13 A A total demand estimate.

14 Q Yes. Now, you are doing or you said you would
15 not do, I believe, was your testimony earlier, the market
16 capture approach that Mr. Stine took. So my question to
17 you is, if you had the total demand, how would you figure
18 out what the demand that a quarry on a Riddle Aggregates
19 property would serve?

20 A That's a little difficult to say. It depends on
21 a lot of different factors and how much was known about
22 the hypothetical quarry. If I were able to talk to the
23 people that were running the quarry, I'd want to ask them
24 what product mix they were selling, if they had
25 predetermined contracts already, if they had, I believe

1 it's been mentioned earlier, specific deals with
2 particular providers. That's going to help determine -- I
3 don't know what a total demand would consist of in this
4 particular case. Where did those numbers come from? What
5 does that depend on?

6 Q I believe that you testified on your
7 qualifications that you have evaluated exploration type
8 properties in the Aggregate space, five to ten, right? We
9 call those greenfield properties. Have you heard that
10 term before?

11 A I've heard that term before.

12 Q Okay. When you're evaluating a greenfield
13 property, do you need to have contracts in place to start
14 mining or to evaluate?

15 A Evaluation is very different from starting
16 mining.

17 Q Yeah.

18 A Just to clarify that.

19 Q Do you need contracts to evaluate whether you
20 can start mining?

21 A You can evaluate anything.

22 MR. WHARTON: All right. No further questions.

23 THE COURT: You may sit down. Thank you for
24 your testimony.

25 THE WITNESS: Thank you.



1 MR. HALLER: Your Honor, at this point
2 Respondent would call Brian Groff to testify. I believe,
3 given the timing, we're at just before 3, we'd at least
4 qualify him and the reports and we see where we're at. Is
5 that agreeable?

6 MR. STEIGLEDER: If I have a chance, I have all
7 my materials. I will need a break before we start. We
8 just want to go through qualifications and get all my
9 materials.

10 MR. HALLER: When would Your Honor -- we're
11 still proposing to move forward with him today.

12 MR. STEIGLEDER: Excuse me?

13 MR. HALLER: We're still proposing to move
14 forward with him today, though.

15 MR. STEIGLEDER: I think we'd like to -- we can
16 get him qualified. We have enough time to do that. Get
17 his report in.

18 MR. HALLER: I think that Your Honor had
19 expressed a desire that we keep moving things forward, and
20 I'm happy to have him qualified. And I've already
21 instructed him that if he takes the stand, qualified, he's
22 crossed tomorrow. We don't have time today, that, of
23 course, he would not speak about the matter until -- it's
24 up to Your Honor on how you want to proceed.

25 THE COURT: And Mr. Steigleder, are you, because



1 I know we're ahead of schedule. Are you ready to qualify
2 this afternoon?

3 MR. STEIGLEDER: I'm ready to proceed, Your
4 Honor. I don't need to get my material. I may need a
5 break, if we continue the cross, to get my materials
6 together.

7 THE COURT: We can take a five-minute break so
8 you can get your materials.

9 MR. STEIGLEDER: Okay. Yes. Thank you.

10 MR. HALLER: Thank you, Your Honor.

11 THE CLERK: All rise.

12 (Whereupon, a recess was held from 2:53 p.m.
13 until 3:03 p.m.)

14 THE CLERK: All rise.

15 THE COURT: You may be seated.

16 MR. HALLER: Stephen Haller for Respondent.
17 Your Honor, Respondent calls Brian Groff to the stand.

18 BRIAN GROFF

19 having been duly sworn, testified as follows:

20 THE CLERK: Please state your name.

21 THE WITNESS: Brian G. Groff.

22 THE CLERK: Thank you.

23 VOIR DIRE EXAMINATION

24 BY MR. HALLER:

25 Q Mr. Groff, why are you here today?



1 A I'm here today to testify on the expert reports
2 that I wrote for the Riddle Aggregates case, one being an
3 opening report and the other being a rebuttal report to
4 Messrs. Gold, Howle, and Stock (ph.).

5 Q And what is your educational background from
6 college onwards?

7 A I earned a Bachelor's of Science in mining
8 engineering from the University of Missouri at Rolla in
9 1999. And since that time, I've just had short courses
10 and just continuing education to maintain my licenses.

11 Q What professional registrations do you have?

12 A I'm a licensed professional engineer in 18
13 states, including Alabama, Georgia, Tennessee, and
14 Kentucky. I'm a registered member of the Society for
15 Mining, Metallurgy & Exploration. I'm a certified
16 minerals appraiser of the International Institute of
17 Minerals Appraisers, and I'm a certified MSHA instructor.

18 Q As part of SME, do you have any specialty? I'm
19 sorry. As part of your professional engineering
20 certification, do you have any specialties?

21 A Yes. As most states only recognize a
22 professional engineer, not specific disciplines, I am a
23 mining and mineral processing engineer, which is
24 recognized by the State of Nebraska specifically.

25 Q And you're admitted there?



1 A Yes.

2 Q Are you a member of any SME committees?

3 A Yes. I'm a past chair of the SME Resources &
4 Reserves Committee. That is the committee that writes the
5 SME guide for reporting exploration results, mineral
6 resources, and mineral reserves. I'm also a member of the
7 SME Valuation Standards Committee, which writes the SME
8 valuation standards.

9 Q Are you are you still a member of the Resources
10 & Reserves Committee?

11 A Yes, I am.

12 Q And have you heard the term CRIRSCO?

13 A Yes.

14 Q What is that?

15 A Yes. CRIRSCO is the international committee for
16 writing the resources and reserves reporting standards to
17 which SME is the U.S. member, CIM is the Canadian member.
18 I am one of two representatives to CRIRSCO for the United
19 States.

20 Q And you mentioned the certified minerals
21 appraiser designation. What's required for the CMA?

22 A To be a certified minerals appraiser applicants
23 must have at least four years of experience following the
24 receipt of an undergraduate degree, such as a
25 baccalaureate degree. They have to have training on



1 Uniform Standards of Professional Appraisal Practice.
2 They have to have recommendations from at least three
3 fellow certified minerals appraisers, and they have to
4 submit a sampling of work to the IIMA to which they'll put
5 together an ad hoc committee to review that work and
6 determine if the applicant is experienced and eligible to
7 receive the certified minerals appraiser designation.

8 Q What's your current position and title?

9 A I am the owner and the principal of Groff
10 Engineering & Consulting PLLC, which was founded in
11 Kentucky.

12 Q When was that founded?

13 A 2017.

14 Q What experience do you have in the mining
15 industry?

16 A I have nearly 30 years of experience in the
17 mining industry, starting in college with an extended
18 internship at the zinc mines in Middle Tennessee. I also
19 did an internship for Cargill Salt in New York. And then
20 following graduation, I worked for Cargill Salt full time
21 in Avery Island, Louisiana. Then I went to California to
22 work some 30,000 acres in San Francisco Bay Area for
23 producing salt. I was the maintenance manager for
24 maintaining all the equipment, mobile and fixed, for that
25 salt producing facility.

1 Beginning in about 2005, I was recruited by Bucyrus
2 International to move to Kentucky and work on the largest
3 earthmoving equipment in the world, which were draglines
4 and shovels, which we had maintenance contracts in West
5 Virginia, Florida, and Grand Bahama.

6 I was also an applications engineer for sizing
7 draglines and sourcing used draglines for relocation for
8 various projects.

9 Following the recession, when many of us lost our
10 jobs, I went into consulting, and in 2009 I passed the
11 principles of practice exam for mining and mineral
12 processing and obtained my PE license in 2010.

13 Q And of the experience you just summarized, what
14 experience is in limestone aggregates?

15 A Much of my limestone aggregates experience has
16 been since I've been a licensed PE. We've done several
17 due diligence projects for the publicly traded company
18 Summit Materials, when there was still Summit Materials.
19 I've also been the engineer of record for developing and
20 constructing a new underground limestone mine for
21 Continental Cement in Hannibal, Missouri. As Groff
22 Engineering, we've done due diligence projects for
23 Construction Partners in acquiring Blount Springs
24 Materials in North Alabama, Blue Water Industries for
25 acquiring 17 aggregates operations in East Tennessee and

1 also in Northern Alabama. And I've also done due
2 diligence for the newly formed Indian Creek Materials in
3 South Central Missouri, to name a few.

4 Q What experience do have modeling mineral
5 resources and reserves?

6 A I've been modeling resources and reserves almost
7 my entire career, starting back in college using Maptek
8 Vulcan when it was still Unix. I've got some experience
9 on Datamine, but the bulk of my experience is using
10 Carlson software, which is used heavily in the coal fields
11 of East Kentucky and in the aggregates industry. I
12 started learning it in 2008, after having already 15 years
13 of CAD experience. I'm considered by Carlson today an
14 expert user, and I teach at their user conference in
15 Kentucky every other year.

16 Q How many times have you testified in Tax Court?

17 A I've testified in person twice. And once, I did
18 not testify in person. They accepted my report as my
19 testimony. That opinion, Harman Road, was just served
20 earlier this month.

21 Q And you're qualified in those cases?

22 A Yes, sir. I was.

23 Q And you mentioned the Harman Road opinion. What
24 did the court say about your testimony in that opinion?

25 A They found my testimony --



1 MR. STEIGLEDER: Objection, Your Honor. Just go
2 to qualifications. I mean, we don't need to have him
3 repeat what a Court decided --

4 THE COURT: Well, I had a concern myself. I
5 believe, if I'm correct, you're referring to his report,
6 because I, and maybe I'm incorrect, but I don't think the
7 court has released an opinion.

8 MR. HALLER: Oh, yes. Harman Road was, I
9 believe, two weeks ago. The court relied on Mr. Groff's
10 opinion in that opinion.

11 THE COURT: Okay.

12 MR. HALLER: I can, specifically on page 34 of
13 the TC Memo opinion.

14 MR. STEIGLEDER: Your Honor, we don't need to go
15 into what the opinions are or what he did. I think we can
16 establish the fact that he's qualified in that case, and
17 that goes with his qualifications. Anything beyond that
18 is potentially not relevant to his qualifications here
19 today.

20 THE COURT: The objection is sustained.

21 MR. HALLER: Okay. Thank you, Your Honor.

22 BY MR. HALLER:

23 Q So do you recall the purpose that you were
24 qualified?

25 A I believe I was qualified as a mining engineer

1 and a expert in minerals resource and reserve evaluation
2 and mineral valuation.

3 Q What experience do you have reviewing and
4 analyzing other mineral or mining technical reports?

5 A Well, certainly, through all my experience and
6 due diligence projects, we've reviewed technical reports
7 for other limestone operations. Specifically, those would
8 have been in reviewing company reports for acquisitions
9 that Summit Materials was making or acquisitions that CRH
10 was making, as in the Philippines, when we were working
11 that. So I would say I've reviewed several technical
12 reports for limestone operations.

13 MR. HALLER: Your Honor, at this time Respondent
14 offers Mr. Groff as an expert in mining engineering,
15 mineral evaluation, mine feasibility analysis. Respondent
16 also offers Mr. Groff as a certified mineral appraiser,
17 skilled and knowledgeable of value of real estate with
18 mineral deposits, resources, and reserves. Respondent
19 notes that the Petitioner's counsel in this case were
20 Petitioner's counsel in Mattock Holdings, and he was
21 qualified as an expert in mining engineering and minerals
22 appraisal.

23 MR. STEIGLEDER: Voir dire, Your Honor?

24 THE COURT: Yes.

25 VOIR DIRE



1 BY MR. STEIGLEDER:

2 Q Good afternoon, Mr. Groff. Is the CV in your
3 report, is that current?

4 A The CV in my report is not current, and I have
5 submitted an errata sheet with some additions to that CV.

6 Q And with that errata sheet, would you consider,
7 then, that resume and with that errata sheet a current
8 version of your CV?

9 A Yes, I would.

10 MR. STEIGLEDER: And if we could ask the clerk
11 to please switch screens to Petitioner's control.

12 BY MR. STEIGLEDER:

13 Q Mr. Groff, you're not a licensed real estate
14 appraiser in any state, are you?

15 A No, I'm not.

16 Q You're not a certified general real estate
17 appraiser, correct?

18 A That's correct.

19 Q You do not hold an MAI designation from the
20 Appraisal Institute, correct?

21 A That is correct.

22 Q Are you a member of the Appraisal Institute?

23 A No, I am not.

24 Q Have you ever been licensed by any state as a
25 real estate appraiser?



1 A No.

2 Q And you're not an expert in uniform standards of
3 appraisal practice, correct?

4 A I am not an expert, though I am familiar with
5 them.

6 Q Could you repeat that last?

7 A I said I am not an expert in USPAP, though I am
8 familiar with the standard.

9 Q You're familiar with the standards. And those
10 standards refer to USPAP are the professional standards
11 that govern the conduct of licensed real estate
12 appraisers, correct?

13 A The, as I understand it, USPAP governs both the
14 ethics for licensed real estate appraisers and the
15 methodologies and standards that they follow in doing
16 their work.

17 Q Are you governed by USPAP in your professional
18 practice as a mining engineer, Mr. Groff?

19 A I am not, but as a member of the IIMA, I am
20 expected to follow the standards in USPAP.

21 Q If the CMA is performing a nonappraisal service,
22 USPAP doesn't govern it, correct?

23 A If CMA is performing it. If it is a
24 nonappraisal assignment, then USPAP does not apply.

25 Q You're not governed by USPAP in your



1 professional practice in mineral evaluation, correct?

2 A I'm expected to adhere to the principles in
3 USPAP.

4 Q And you're expected to adhere to those
5 principles of USPAP based on your CMA?

6 A Yes, I am.

7 Q And that's certified mineral appraiser. Is that
8 the title?

9 A That's correct.

10 Q And you used, you have a stamp in your report.
11 They give you a stamp when you become a member of that?

12 A Yes. A certified member.

13 Q And the IIMA, the International Institute of
14 Mineral Appraisers, which I'll refer to IIMA, they issued
15 your certified minerals appraiser designation, correct?

16 A Yes.

17 Q And the IIMA is a private professional
18 organization, correct?

19 A Yes, it is.

20 Q And it's a voluntary professional association
21 for specialists in the appraisal of mineral properties,
22 correct?

23 A Yes. We are a volunteer run organization.

24 Q And the IIMA has no governmental authority to
25 license, regulate, discipline, or enforce standards on



1 CMA's the way that state agencies do for appraisers,
2 correct?

3 A That is correct.

4 Q In fact, membership and the CMA designation are
5 voluntary credentials based on the organization's own
6 criteria, not state mandated requirements, correct?

7 A That is correct.

8 Q And earlier today, you were asked questions
9 about how one becomes a member, what you must do to become
10 a member or earn your CMA, correct?

11 A Yes.

12 Q As you said, you must have four years of
13 experience?

14 A Yes.

15 Q And then I believe you said you must have
16 certain USPAP training, correct?

17 A Yes.

18 Q And in fact, the requirements for membership as
19 a CMA can include USPAP training, but it's not always
20 mandatory, is it?

21 A As I sit here today, the board does require
22 applicants to have a 15-hour USPAP course.

23 MR. STEIGLEDER: If we could pull up, or
24 actually I'm going to -- may I approach Your Honor?

25 THE COURT: Yes.



1 MR. STEIGLEDER: And then I'm going to hand the
2 witness an exhibit that's been pre-marked as Exhibit 7299-
3 P. Oh. It's not pre-marked.

4 MR. HALLER: Yeah.

5 MR. STEIGLEDER: We can pre-mark it if you'd
6 like. One moment. It's 7299-P.

7 (Whereupon, the Document referred to as Exhibit
8 7299-P was marked for identification.)

9 MR. STEIGLEDER: Can we publish it?

10 BY MR. STEIGLEDER:

11 Q I'd like to direct your attention to the bylaws,
12 in particular, section 2.3.1, educational requirements for
13 membership shall include. It says, first, you need a
14 degree in geology, mining, or petroleum engineering,
15 correct?

16 A Correct.

17 Q Number two, completion of the standard 15-hour
18 USPAP course or an equivalent as recognized by the
19 executive committee?

20 A That's correct.

21 Q And that's the executive committee of the IIMA?

22 A Yes.

23 Q And then three, a minimum of one continuing
24 education course and appraisal of minerals as recognized
25 by the executive committee, correct?

1 A Yes.

2 Q And then it says four, Number four, in lieu of
3 the foregoing, evidence satisfactory to the executive
4 committee or a committee of examiners duly appointed by it
5 of sound knowledge and proficiency in a field appraisal of
6 minerals.

7 A Yes.

8 Q So that USPAP requirement isn't a must. It's
9 not a requirement. Someone can earn their CMA without
10 taking the USPAP requirement, correct?

11 A The way that the language is written requires
12 some context. We do have some international members that
13 are appraisers in other countries, and as part of their
14 becoming a member of IIMA, the equivalent courses are
15 accepted. But today, in practice, the executive
16 committee, which I have worked with, advises and mandates
17 that the applicants have that 15-hour USPAP course.

18 Q That's based on your testimony here today and
19 your work with the CMA. It doesn't say that on the
20 website.

21 A That is correct.

22 Q And here, in this case, you were not hired to
23 prepare a mineral appraisal. Is that correct?

24 A That is correct.

25 Q In terms of the qualifications, could you please



1 read those back? We will have an objection.

2 MR. HALLER: Respondent offers Mr. Groff as an
3 expert in mining engineering, mineral evaluation, mine
4 feasibility analysis, and also offers Mr. Groff as a
5 certified mineral appraiser, skilled and knowledgeable in
6 valuing real estate with mineral deposits, resources, and
7 reserves.

8 MR. STEIGLEDER: Your Honor, I think we would
9 agree to the mining engineering, the second designation
10 regarding feasibility. But in terms of CMA, CMA and all
11 the additional language skills or whatever follow that,
12 we're not going to agree to that. I think that he should
13 not be qualified in the descriptive words that Mr. Haller
14 used to the CMA. And I also don't believe that the CMA is
15 of any really particular relevance, given that he's
16 admitted he's not performing an appraisal here and that
17 it's a voluntary designation by a private company, not
18 subject to state regulation or practice, and it has no
19 relevance to any type of appraisal practice under USPAP,
20 and there's no authority with which to discipline its
21 members for any violation.

22 So it's basically a very loose membership, where
23 they give you a stamp that has no state regulatory effect.
24 So I would suggest that he is not qualified as a CMA.
25 One, it's not relevant. Two, he's not preparing an

1 appraisal here.

2 MR. HALLER: May I respond, Your Honor?

3 THE COURT: Yes.

4 MR. HALLER: Again, I note that Petitioner
5 agreed to him being recognized as a minerals appraisal
6 expert in Mattock, so he's already been recognized as
7 such. He does reflect aspects of Mr. Stine's fair market
8 mineral valuation with his evaluation, so there are
9 aspects of appraisal topics. So we ask that, again -- we
10 can strike the added verbiage and just offer Mr. Groff as
11 a mining engineer and a minerals appraiser. We're fine
12 with that if that satisfies the other side.

13 MR. STEIGLEDER: So you're saying mining
14 engineer and?

15 MR. HALLER: Yes. I said mining engineering,
16 mineral evaluation, and mine feasibility analysis, all of
17 which comes under the auspices of mining engineering.
18 He's been qualified to do all of it. But I'm fine with
19 mining engineering and minerals appraising. He has the
20 qualifications to do both.

21 MR. STEIGLEDER: And maybe just to make this
22 easier, you said mineral evaluation?

23 MR. HALLER: I said evaluation, but I've also
24 said minerals appraisal.

25 THE COURT: Okay. The Court's slightly



1 confused.

2 MR. STEIGLEDER: If I can probably make this
3 easy.

4 BY MR. STEIGLEDER:

5 Q If, for your understanding, Mr. Groff, is the
6 term appraisal synonymous with valuation in the SME
7 guidelines?

8 A Yes. The term appraisal is synonymous with
9 valuation.

10 Q So if we say mineral valuation, would that
11 encompass it?

12 MR. HALLER: I'd be fine with that.

13 THE COURT: Okay. So I need clarification on
14 what you're offering him for now.

15 MR. HALLER: So as revised, we could say mining
16 engineering, minerals evaluation, and minerals valuation.

17 THE COURT: Mining engineering?

18 MR. HALLER: Mining engineering.

19 THE COURT: Mineral evaluation?

20 MR. HALLER: Yes.

21 THE COURT: And mineral evaluation.

22 MR. HALLER: Yes.

23 THE COURT: And you're both in agreement?

24 MR. STEIGLEDER: Agreed.

25 THE COURT: All right. You're certified in



1 those three areas as an expert.

2 DIRECT EXAMINATION

3 BY MR. HALLER:

4 Q Mr. Groff, did you prepare an expert witness
5 report for this case?

6 A Yes. I prepared two.

7 Q And you prepared a rebuttal report?

8 A Yes.

9 MR. HALLER: Your Honor, may I approach to hand
10 the witness and the Court a copy of the reports marked as
11 Exhibits 9001-R and 9002-R?

12 THE COURT: Yes.

13 MR. HALLER: And I've also handed Petitioner's
14 counsel a copy of the same.

15 BY MR. HALLER:

16 Q Mr. Groff, I've handed you Exhibit 9001-R. Will
17 you review it and tell the Court what it is?

18 A This is a copy of my opening reports for Riddle
19 Aggregates.

20 Q Did you prepare this report?

21 A Yes, I did.

22 Q Do you have any assistance?

23 A Yes, I did.

24 Q What assistance?

25 A I have a senior mining engineer, PhD PE, that



1 works for me, and he assisted with some of the coding and
2 analysis and CAD work under my direction. I also have a
3 professional geologist that assisted me with some of the
4 GIS mapping and research.

5 Q When you say research, could you explain to the
6 Court what you mean by research?

7 A Yeah. It's locating parcel boundaries and roads
8 and pulling in GIS layers effectively.

9 Q Did you have any other assistance?

10 A No.

11 Q You were here earlier this morning in the
12 courtroom?

13 A Yes.

14 Q And there was some discussion about use of
15 computer software to assist in your review or editing. Do
16 you use any computer software to review or edit your
17 report?

18 A The only computer software that I use to review
19 or edit a report is Grammarly, and it's, I find it
20 helpful. I'm an engineer. English wasn't my forte.
21 Grammarly helps.

22 Q And so as part of using of Grammarly, and
23 you heard some back-and-forth about quota and issues
24 there. How do you account for Grammarly and how it
25 reviews your report?

1 A It's mostly just editing sentences that I write.
2 When we get to quoted material, Grammarly will edit it,
3 and the user must be careful that it doesn't try to change
4 quoted citations.

5 Q Well, how do you ensure that it doesn't change
6 your quoted citations?

7 A For every edit, I have to manually acknowledge
8 if I accept its suggestion or not, and I have to make a
9 mental note to not allow it to make changes to those
10 quoted references.

11 Q To your knowledge, did Grammarly edit your quote
12 in either of your reports?

13 A No. Not to my knowledge.

14 MR. HALLER: Mr. Yoshida, please go to Exhibit
15 9001-R, and that's PDF page 84.

16 BY MR. HALLER:

17 Q Mr. Groff, you can go to page 82 of your printed
18 report, if you would. Do you see the page?

19 A Yes.

20 Q Is that your signature on this page?

21 A Yes. That is my signature and my
22 (indiscernible).

23 Q Wonderful. Could you please now turn to Exhibit
24 9002-2? And will you review it and tell the Court what it
25 is?

1 A This is a copy of my rebuttal reports in Riddle
2 Aggregates.

3 Q Did you prepare this report?

4 A Yes, I did.

5 Q Did anyone assist you in preparing this report?

6 A Yes.

7 Q Who was that?

8 A The same individuals as previously stated.

9 Q Okay. Anyone else with respect to this
10 rebuttal?

11 A No.

12 Q And with respect to use of Grammarly, any
13 anything different than what you just said for your
14 opening report?

15 A No.

16 Q Are the analysis explanations and opinions
17 expressed in the rebuttal report your own?

18 A Yes.

19 MR. HALLER: Mr. Yoshida, please bring up 9002.
20 Okay. Please go to PDF page 42 of 9002-R, which is on the
21 screen.

22 BY MR. HALLER:

23 Q And Mr. Groff, that's page 40 of your printed
24 report. Are you on that page?

25 A Yes.



1 Q Is that your signature?

2 A Yes. And my (indiscernible).

3 Q Setting that aside for now then.

4 MR. HALLER: Your Honor, Mr. Groff had prepared
5 an errata sheet. Opposing counsel had asked him a
6 question about a CV. It was an errata sheet and exhibit
7 identifying correct some omissions on his CV. Respondent
8 had marked the errata sheet, which is 9040-R. That's also
9 a stipulated exhibit that was received on Monday morning
10 by the Court.

11 And so Mr. Yoshida, please bring up Exhibit
12 9040-R.

13 BY MR. HALLER:

14 Q Mr. Groff, what is this exhibit?

15 A This is a list of additional items that should
16 be on my CV.

17 Q So they were omitted from your CV then?

18 A Yes. They were.

19 Q And in addition to this page --

20 MR. HALLER: Mr. Yoshida, if you go advance one
21 page and one more?

22 BY MR. HALLER:

23 Q So what is this on page 3 of the PDF?

24 A This is the first page of my CV.

25 Q Is this your revised CV?

1 A Yes. It is.

2 Q Do you have any other clarifications for the
3 Court?

4 A I do not. Only that the revision on the CV is
5 that I was recently licensed in New York. So that would
6 be the change.

7 Q So it's an additional licensing?

8 A Yes.

9 Q Which licensing for the benefit of the Court?

10 A Professional engineer.

11 MR. HALLER: Your Honor, at this time,
12 respondent offers Exhibits 9001-R and 9002-R as Mr.
13 Groff's expert report and expert rebuttal report.

14 MR. STEIGLEDER: Voir dire, Your Honor?

15 THE COURT: Yes.

16 VOIR DIRE

17 BY MR. STEIGLEDER:

18 Q Mr. Groff, in focusing first on Exhibit 9001-R,
19 which is your opening or your initial report, I'll just
20 clarify a few things. You mentioned in at the beginning,
21 you said the format of your report follows that technical
22 report summary, and it cites to Code of Federal Regulation
23 section 229.601(b)(96). And that's on page 10 of your
24 report. I apologize.

25 A Yes. That is correct.



1 Q All right. And so this reference, it's to the
2 standard instructions for filing forms under the
3 Securities Act of 1933 and the Securities Exchange Act of
4 1934, correct?

5 A Yes. But as I explained in my report, we just
6 follow the format of the table of contents. That's really
7 all we're using. It is not a TRS for the SEC purposes.

8 Q Okay. And those are just, again, you said the
9 technical requirements and that's the structure your
10 report?

11 A The content of a technical report, yes.

12 Q And are you familiar with what's commonly
13 referred to as SK 1300 or subpart 1300 of Regulation SK?

14 A Yes. I am.

15 Q And that regulation -- that Regulation SK 1300,
16 right, was adopted in 2018, and it became effective 2021;
17 is that correct?

18 A It was finalized in October or December of 2018.
19 It had a long transition period, where reporting wasn't
20 mandated until after fiscal year '21.

21 Q You would agree that Riddle Aggregates is a
22 privately held company, correct?

23 A I don't know. I don't believe it's public,
24 though.

25 Q Were you here to the for the testimony of Mr.



1 Kaynard yesterday?

2 A Yes, but it was very hard to hear him sitting in
3 the back.

4 Q Okay. I imagine it was. So you're not aware
5 that Riddle Aggregates membership interests are listed or
6 traded on a national security exchange, correct?

7 A No. I'm not aware that they are.

8 Q And you would also agree that Riddle Aggregates
9 then, if they're not listed, is not required to file
10 periodic reports such as Form 10-K and Form 10-Q with the
11 SEC, correct?

12 A That's correct.

13 Q And then you would agree that the technical
14 report summary requirements of Regulation SK do not, by
15 their own terms, apply to Riddle Aggregates, correct?

16 A That is correct.

17 Q Would you agree that the format of your report
18 does not impose on Riddle Aggregates any obligation that
19 would not otherwise exist under applicable law?

20 A I would agree.

21 Q Okay. A few other questions concerning your
22 report. And to clarify, you don't hold any degree in
23 biology, ecology, wildlife management, environmental
24 science, or any related life science discipline, do you?

25 A I do not.



1 Q You're not trained in the habitat requirements,
2 survey methods, or population dynamics of any species, are
3 you?

4 A No.

5 Q You're not trained in the identification of
6 habitats or species, are you?

7 A No.

8 Q Turning to wetlands, you don't have any
9 experience regarding soils and soil identification,
10 correct?

11 A I have a little experience, but just through the
12 work that I've done in my career.

13 Q Okay. And you're not a wetland ecologist, a
14 wetland scientist, a wetland specialist, or a wetland
15 delineator, correct?

16 A No, but I've had several projects where I have
17 worked on wetlands and Clean Water Act section 404
18 permitting.

19 Q And notwithstanding that experience, you've
20 never held any professional certification related to
21 wetland delineation, correct?

22 A No.

23 Q You're not a licensed environmental consultant,
24 are you?

25 A No.

1 Q You've never received formal training in wetland
2 ecology, correct?

3 A What is formal training in wetland ecology?

4 Q I'll assume then the answer is no. Have you
5 received any training in in wetland ecology or --

6 MR. STEIGLEDER: Well, actually, let's strike
7 that.

8 BY MR. STEIGLEDER:

9 Q You're not an expert in jurisdictional waters of
10 the U.S. determinations, are you?

11 A No. I rely on the Court to help with
12 jurisdictional determinations.

13 Q You've never worked for the U.S. Army Corps of
14 Engineers, correct?

15 A Correct.

16 Q You're not trained in the three-parameter
17 approach to wetlands identification, are you?

18 A No.

19 Q Are you familiar with the three-parameter
20 approach of wetlands delineation?

21 A Possibly.

22 Q Well, the three-parameter approach to wetlands
23 identification requires examination of hydrophytic
24 vegetation, hybrid soils, and wetland hydrology; does that
25 sound familiar?

1 A It does, but I'm not trained in that.

2 Q In fact, your CV under work experience
3 identifies only one project related to Clean Water Act
4 section 404 permitting, correct?

5 A That may be, but I've certainly worked on more
6 than one project related to wetland delineation.

7 Q Your CV mentions a project for mountaintop
8 removal coal mines in West Virginia?

9 A Yes. Of which there were several projects.

10 Q And it was that a project that involved the
11 Clean Water Act, CWA section 404?

12 A Yes. Absolutely.

13 Q That was the one in West Virginia?

14 A There were three in West Virginia specifically.

15 Q And do you have any experience Alabama?

16 A No.

17 Q And each state has their own U.S. Army Corps of
18 Engineers and offices, correct?

19 A There are different districts. Yes.

20 Q Is that correct?

21 A Yes.

22 Q And you're aware that are you aware that the
23 U.S. Army Corps of Engineers provide region specific
24 methods for wetlands delineation?

25 A Yes.



1 Q Finally, your professional license is in mining
2 engineering, not environmental engineering, correct?

3 A That is correct, though we do have to take
4 reclamation courses in school.

5 Q You've never held the job title of environmental
6 manager environmental specialist, have you?

7 A No.

8 Q And you're not an expert in mine permitting,
9 correct?

10 A Depends on the state. I do do mine permitting,
11 yes.

12 Q Are you an expert in mine permitting in Alabama?

13 A I have permitted in Alabama. I don't know if
14 I'd consider myself an expert, but I am familiar with it
15 and have done it.

16 Q And you're not being qualified as an expert in
17 permitting today?

18 A That's correct.

19 MR. STEIGLEDER: Your Honor, Petitioner moves to
20 this Court to exclude from evidence section 16 of Brian
21 Groff's expert report along with all opinions and
22 conclusions contained therein, including but not limited
23 to, the opinion in section 16.1 which states, "There are
24 likely jurisdictional waters of the U.S. on the property;
25 two, the conclusion in section 16.5.4 that the subject

1 property reasonably has jurisdictional wetlands and
2 streams meeting the definition of waters of the United
3 States; and three, the opinion in section 16.3 that it is
4 reasonably probable that an endangered species is on the
5 subject property."

6 These opinions should be excluded because Mr.
7 Groff lacks the qualifications and expertise necessary to
8 render such opinions and the methodology underlying these
9 conclusions fails to satisfy the reliability standards
10 established under Daubert and Federal Rule of Evidence
11 702.

12 Mr. Groff does not possess the education,
13 training, or credentials necessary to offer expert
14 opinions concerning the presence of jurisdictional
15 wetlands or waters of the United States. He does not hold
16 any degree in biology, ecology, wildlife management,
17 environmental science, or any related life science
18 discipline. He is not a wetland ecologist, a wetland
19 scientist, a wetland specialist, or wetland delineator.
20 He has never held any professional certification related
21 to wetland delineation. He has no training in wet -- no
22 formal training in wetland ecology. He is not an expert
23 in wetland identification or jurisdictional waters of the
24 United States.

25 He has never worked for the U.S. Army Corps of

1 Engineers, which is the agency responsible for determining
2 whether waters are jurisdictional under the Clean Water
3 Act. Even if Mr. Groff possessed the requisite
4 qualification, his methodology for reaching conclusions
5 about the jurisdictional waters and wetlands fails to meet
6 the standards of scientific reliability required under
7 Daubert. Mr. Groff is similarly unqualified to render
8 opinions regarding threatened endangered species on the
9 subject property. He does not hold any degree in biology,
10 ecology, wildlife management, environmental science, or
11 any related life science discipline as stated.

12 Despite these significant deficiencies, Mr.
13 Groff opines in the sections identified, that it's
14 reasonably probable that endangered species is on the
15 subject property. For the foregoing reason, section 16 of
16 Mr. Groff's expert report, including his conclusions that
17 there are likely jurisdictional waters of the U.S. on the
18 property, that the subject property reasonably has
19 jurisdictional wetlands and streams, and that is
20 reasonably probable that an endangered species is on the
21 subject property should be excluded from evidence.

22 Mr. Groff lacks a requisite qualification to
23 offer these opinions as methodology fails to satisfy the
24 reliability standards under Daubert and Federal Rule of
25 Evidence 702.

1 THE COURT: Mr. Steigleder, I was just being
2 clear. Were you striking section 16 in its entirety, or
3 were you stopping when it gets into permitting and --

4 MR. STEIGLEDER: Anything related to the
5 wetlands permitting.

6 THE COURT: I didn't know if you're going
7 beyond -- that's your social impact, it's 16.4. So I
8 didn't know because at one point, I think you said section
9 16, so I wanted to be clear.

10 MR. STEIGLEDER: I would say 16.1, 16.2, 16.3,
11 not 16.4, 16.5, 16.5.4. And that would be it, Your Honor.

12 MR. HALLER: Just to be clear, 16.5 would
13 include all of the subparts, which include mine
14 permitting. May I respond, though, generally to --

15 THE COURT: Yes.

16 MR. HALLER: -- Petitioner? Your Honor, first
17 of all, I note that that we've heard extensive testimony
18 by Petitioner's experts about their experience as mining
19 engineers and in the mining industry. And we've heard
20 about mining evaluations, mining evaluations, and
21 valuations both typically include legally permissible,
22 physically possible aspect of analyzing mine sighting,
23 planning, et cetera. And as part of those
24 responsibilities of understanding wetlands, understanding
25 how water, hydrogeology impacts the site, flowing water,

1 spring water, and the like, all of that, how it impacts
2 it. Mr. Groff's report note notes that as part of mine
3 planning. It's required for mine planners to consider all
4 of these aspects. This report discusses these in section
5 16 generally and some of the subparts.

6 He has stated he's got experience in these
7 areas. And his report goes into some detail. I spoke
8 with folks at the Army Corps of Engineers and others who
9 are knowledgeable, who have given him background expertise
10 information on these topics. And again, Petitioners did
11 not qualify Mr. Gold when he said it is legally possible,
12 which, of course, includes zoning permitting, waters, et
13 cetera. Petitioners did not qualify him in wetlands
14 management, but there's wetlands on the property.

15 So again, I mean, Mr. Groff has demonstrated his
16 understanding background in wetlands management, water
17 management, hydrogeology, and its impact in mine planning.
18 As far as the permitting goes, he summarizes the permits
19 that are required. Mr. Howle testified on aspects of
20 that, and also noted that there are other Federal
21 agencies, who have jurisdiction over that. Again, Mr.
22 Groff is knowledgeable about that. He's had to consider
23 that. He's testified that he has dealt with the U.S. Army
24 Corps of Engineers and had to deal with for permitting
25 requirements. We've heard about air permits. He's

1 knowledgeable about air permits, storm water, and water
2 management on mines. That's part of being a mining
3 engineer. So he's more than qualified. When we talk
4 about on the topic of threatened and endangered species,
5 it's a stipulated document.

6 The baseline is a stipulated document in this
7 case in which the baseline report makes represent that
8 there are at least species, both plant as well as animal,
9 on the property that are of are of interest. And
10 Respondent conceded that the conservation purpose is met
11 for this property. In other words, that there is that the
12 conservation of the property preserves a natural habitat
13 for various species, plant and animal.

14 And again, the baseline report goes into some
15 detail how there may be -- there is suggested evidence of
16 threatened species, perhaps potentially endangered,
17 although I don't know if anything informally endangered
18 was seen on the property. That's always a question for
19 from Respondent's perspective, but at least threatened
20 species on the property. Again, specifically the document
21 for Riddle. We're not talking about any other property
22 here, just for Riddle.

23 So I don't think it's out of his wheelhouse to
24 ask in a review of a potential mining site whether there
25 are endangered species on the site, whether there are

1 threatened species on the site. Mr. Groff, as I know,
2 because I walked the property with him, identified aspects
3 of springs, caves, did some research about the presence of
4 caves. Caves often have endangered species associated
5 with them, like bats. So in the context of all that, I do
6 believe section 16 is applicable. It should be remain in
7 the report.

8 I'll make one final point. Petitioner's counsel
9 mentioned methodology. He did not -- he queried his
10 experience and expertise. He, in no way, looking at
11 Daubert standards, in no way tested any methodology in the
12 report. I think it's more appropriate for just cross-
13 exam, and you can cross exam to his heart's content on
14 that. But if you're going to rule on methodology, he
15 presented no foundation that there are methodology
16 defects. I apologize. And that's it, Your Honor.

17 THE COURT: Do you want to respond before I
18 rule?

19 MR. STEIGLEDER: I do. First, they mentioned
20 they have the baseline document in review. That was
21 prepared by my biologist. That's what biologists do. So
22 Respondent's been long aware of the baseline document
23 report as well as the subject matters contained in them,
24 including environmental review, habitat, species
25 assessment.

1 Here, he mentions that Greg Gold did the same
2 thing, which is not true. Mr. Gold relied on the opinion
3 of Joe Howle. Joe Howle is the only expert in permitting
4 that this Court will hear this week. And there's a reason
5 that we call experts in permitting. There's a reason that
6 we call experts in specific disciplines because they're
7 knowledgeable of it.

8 We demonstrated that Mr. Groff is not
9 knowledgeable. He may be aware, but he is not
10 knowledgeable on this area. And in fact, when I asked him
11 about the three parameters of wetlands delineation, he
12 didn't seem to know those. This requires highly
13 specialized knowledge, and just talking to someone doesn't
14 make a person an expert. His opinions come out far
15 beyond, which Mr. Gold incorporates in his report, for
16 example, Joe Howle, he bases his opinion on an expert,
17 right? That it's reasonably likely.

18 Here, he's making a determination by himself
19 saying it's reasonably likely that there are wetlands,
20 waters in the United States, and rare threatened
21 endangered species. That goes far beyond his scope of
22 expertise. He is not qualified to offer those opinions,
23 and further, the methodology as we discussed, would not
24 satisfy Daubert's standards or Rule 702. This is nothing
25 than a backdoor attempt to get in expert testimony on

1 areas that Respondent chose not to offer experts on.

2 MR. HALLER: May I respond to the delineation
3 point?

4 THE COURT: Yes. And I'm ready to rule.

5 MR. HALLER: His report, in no way --
6 delineation is a formal process that should be done by an
7 expert. We're not pro -- there's no delete delineation,
8 determination, or conclusion in this report in any way.
9 And we have not proffered him as an expert in such, and he
10 has said he doesn't have that expertise. I will note that
11 that Mr. Howle, likewise, that there's probably wetlands
12 there, but he did not make a delineation determination.
13 He was not asked to do that either. So the Court hasn't
14 heard, and isn't going to hear, any evidence of that, and
15 the report doesn't do that. Thank you, Your Honor.

16 THE COURT: I just had a question. I'm looking
17 at 16.5.4, and the subject probably reasonably has
18 wetlands. So I'm not sure if anywhere in the report is
19 being conclusive. Is that correct, Mr. Haller?

20 MR. HALLER: Right. And one of the tasks you'll
21 hear this also with Dr. Rigby tomorrow, Your Honor, is you
22 had pointed out that the whole point of the experts is to
23 advise the Court from their perspective on what's
24 necessary here for this hypothetical mining operation, for
25 the mining engineer's perspective. And so to the extent

1 that a developer of a mining site would want to know, if
2 you were the one who was asked, is this property
3 appropriate for developing of a mine location? I would
4 think from that perspective, you'd want to know. What do
5 I need to know that I don't know?

6 And part of that is, again, a mining engineer is
7 familiar in geological principles, hydrogeology, wetlands,
8 citing as Mr. Groff notes in his report, they can cross
9 him on it, he cited his plan and his quarry specifically
10 with respect to water and mine. I believe Mr. Gold also
11 testified as to the water to some extent. They have to
12 consider that including standing wetlands or wetlands that
13 come and go. So again, I do believe it is in his area of
14 expertise. He does not reach a conclusion that there are
15 wetlands, and we're not proffering him for that.

16 MR. STEIGLEDER: Are you ready to rule or?

17 THE COURT: I'm ready to rule. At this time,
18 I'm not going to strike any sections of the report. And
19 you're able to ask as much as you want on cross with your
20 concerns about the -- of the -- of on -- now I'm getting
21 tongue tied. Make any objections you may have. I'm
22 sorry. I meant to say ask --

23 MR. STEIGLEDER: Repeat that again.

24 THE COURT: Yeah. During cross, you can raise
25 any of these concerns about --

1 MR. STEIGLEDER: Your Honor, I don't plan to
2 have any cross on this for this. He's not an expert in
3 this area. That --

4 THE COURT: Well, the Court's ruling stands.

5 MR. STEIGLEDER: He's already established that.
6 He established the conclusion.

7 THE COURT: I'm not striking the report.

8 MR. STEIGLEDER: And he is reaching legal
9 conclusions. It wasn't as simple as he said. There are
10 legal conclusions that have legal impacts. And one of the
11 main issues here is legal permissibility. And they did
12 not bring a water in. They did not bring an expert in
13 U.S. Clean Water Act. They did not bring a wetlands
14 expert in, and he is reaching legal conclusions. That's
15 what those are. Reasonably probable, it's likely that
16 there's jurisdictional wetlands. Those are legal
17 conclusions that an mining engineer is making in this
18 case.

19 THE COURT: My ruling stands.

20 MR. HALLER: So Your Honor, have accepted both
21 9001 and 9002?

22 THE COURT: No. I haven't -- I only just ruled
23 on striking those sections.

24 MR. HALLER: Okay.

25 THE COURT: I didn't know if there were any



1 other objections to the report. And I'm just on 9001.

2 MR. STEIGLEDER: That was it, Your Honor. Just
3 his legal conclusions on the environmental and wetlands
4 issues.

5 THE COURT: So 9001-R is admitted.

6 (Whereupon, the Document referred to as Exhibit
7 9001-R was received into evidence.)

8 MR. HALLER: And Respondent also offers the
9 rebuttal report, 9002-R. Is there any voir dire on that
10 report?

11 MR. STEIGLEDER: I do have a voir dire on this.

12 VOIR DIRE

13 BY MR. STEIGLEDER:

14 Q And Mr. Groff, can you turn your rebuttal report
15 9002-2, page 5, paragraph number 5? Let me know when
16 you're on paragraph number 5, please.

17 A Yes.

18 Q Concerning Mr. Stine's (ph.) report, you state
19 that your report discusses how the relevant mineral
20 appraisal standards require at least two approaches to
21 valuation to reconcile a final value opinion if it is
22 reasonably possible and appropriate, correct?

23 A Correct.

24 Q And in that footnote, you're citing to the SME
25 standards guidelines for valuation of mineral properties?

1 A Yes.

2 Q If I refer to these guidelines as an SME
3 valuation standard you're referring to. Yes. And
4 rebuttal report in in the same paragraph, paragraph number
5 5, you refer to the relevant mineral appraisal standards,
6 again, citing to the SME valuation standards?

7 A Yes.

8 Q Okay. And we may have already addressed this,
9 but the SME valuation standards define the word appraisal
10 by reference to and basically synonymous with the word
11 valuation, correct?

12 A Yes. For purposes of this case, that would be
13 correct.

14 Q So then for the purposes of your report, when
15 you refer to appraisal here, are you referring to
16 evaluation?

17 A Yes.

18 Q And then section 5 of your rebuttal report,
19 section 5.1, which is found on page 12. Starting on page
20 12, section 5.1. And 5.1 is titled the one is assignment
21 and property identification. If we turn the page to page
22 13 and focus on the last paragraph on page 13.

23 A Yes.

24 Q The last paragraph reads, the appraisal
25 assignment in this matter was to value the real property

1 of interest in the minerals on the subject property, which
2 is undeveloped mountainous property containing limestone;
3 is that correct?

4 A Correct.

5 Q Does your reference here to appraisal
6 assignment, does this refer to USPAP appraisal as an
7 appraisal of real estate?

8 A This would be an appraisal assignment in general
9 under either USPAP or the SME valuation standards.

10 Q Well, you're saying this is you're saying your
11 assignment here is in reference to USPAP appraisal
12 assignments and not appraisal as meaning valuation or the
13 estimate guidelines?

14 A It would be either or, as I interpret it.

15 Q The valuation or appraisal assignment that
16 you're describing in this paragraph, whose assignment are
17 you referring to? Is this Mr. Stine's assignment or your
18 assignment?

19 A This would be the assignment of valuing
20 conservation easement in this matter, which for me
21 specifically, and I presume Mr. Stine as well, was to
22 value the mineral interest in the real property.

23 Q Was your assignment to value a conservation
24 easement?

25 A No, sir.



1 Q So when you're referring to the valuation of the
2 appraisal assignment here, are you referring to the
3 Court's assignment

4 A I presume it would be Mr. Stine's assignment.

5 Q Would you believe that Mr. Stine -- well, let's
6 turn to Mr. Stine's report. And in just page 1, which is
7 section 2.1. Is this section, again, is a rebuttal to Mr.
8 Stine?

9 A Yes.

10 Q Section 2.1, purpose and commissioning. If you
11 blow that up. And again, I'm reading this. "I was
12 engaged by Riddle Aggregates to repair a valuation of the
13 limestone resource on the property as of December 8,
14 2017."

15 A That's correct.

16 Q Okay. And then if you look at the beginning of
17 the next paragraph, "The purpose of this report is to
18 provide an opinion of the fair market value of the
19 economically recoverable limestone resource on the
20 property."

21 A Yes. I understand.

22 Q So it's clear that Mr. Stine did not prepare an
23 appraisal under USPAP, correct?

24 A As you asked that, yes. I understand your
25 question. That's correct.



1 Q So then the heading for section 5.1 back on page
2 12 of Mr. Groff's report, just to tie this out, section
3 5.1, page 12. When it says, "the assignment", and then
4 later when we reference the "appraisal assignment", are
5 those in reference to Mr. Stine's report?

6 A Yes. As I wrote the report, that is in
7 reference to his report.

8 Q Okay. Now let me confirm. Let's discuss then
9 your assignment. If we could focus back, go to page 13
10 now, the first full paragraph. Here, you're again
11 saying -- first full paragraph. Scroll down just a touch.
12 Here, you say, "This assignment involves a matter of
13 valuing a conservation easement." And then you state a
14 definition of conservation easement in the next sentence.
15 That's what this paragraph says?

16 A Yes.

17 Q Is that what you believe your assignment is to
18 value a conservation easement?

19 A No. I believe the assignment is to value the
20 mineral interest in the real property, but the matter of
21 Riddle Aggregates involves a conservation easement.

22 Q And you're clear, Mr. Stine didn't value or
23 appraise the conservation easement, correct?

24 A My understanding is that he attempted to value
25 the mineral interest in the real property, which you can



1 call the limestone resource, but that's my understanding.

2 Q And he did not perform a real estate appraisal,
3 correct?

4 A Correct.

5 Q In your rebar report of Mr. Stine, specifically
6 in this section, you frequently cite to USPAP, USPAP
7 advisory opinions, and the appraisal of real estate, which
8 is published by the appraisal, correct?

9 A Correct.

10 Q In section 5 of your report, you also cited the
11 Uniform Appraisal Standards for Federal Land Acquisitions,
12 correct?

13 A Correct.

14 Q And this is referred to as the Yellow Book?

15 A Correct.

16 Q The Yellow Book contains the Federal guidelines
17 for appraising real property in connection with land
18 acquisitions by the U.S. Government, including by eminent
19 domain and condemnations, correct?

20 A That's correct.

21 Q Does this matter involve the acquisition of land
22 by the federal government?

23 A It does not.

24 MR. STEIGLEDER: Your Honor, Petitioner moves to
25 exclude portions of section 5.1, 5.2, and 5.3 of Mr.



1 Groff's rebuttal report, where Mr. Groff interprets USPAP
2 appraisal standards, real estate valuation principles
3 offered by the Appraisal Institute, and the Uniform
4 Appraisal Standards for Federal Land Acquisitions.

5 In these sections, Mr. Groff intentionally
6 misstates the purpose of Mr. Stine's report, framing it as
7 involving an appraisal or valuation of conservation
8 easement as a means to impose USPAP appraisal standards
9 and USPAP advisory opinions to critique opinions that
10 never claimed to rely on these standards, never cited
11 these standards, and never addressed these standards.

12 The same argument holds true for Mr. Groff's
13 reliance on the Yellow Book. Mr. Stine's report does not
14 address appraising property in connection with a Federal
15 land acquisition or taking, nor does this matter involve
16 such an issue. Mr. Groff is not a licensed real estate
17 appraiser. He has not been qualified as an expert in
18 Uniform Standards of Professional Appraisal practice, and
19 he is not critiquing an appraisal of real estate or a
20 minerals appraisal.

21 In sum, USPAP does not govern Mr. Stine's
22 report. And even if it did, Mr. Groff is not qualified to
23 offer such opinions. Under Federal Rule of Evidence 702
24 and Daubert, an expert must be qualified by knowledge,
25 skill, experience, training, or education to offer

1 opinions in a particular subject area. He has not been
2 qualified as a USPAP appraisal expert, and by citing and
3 relying on USPAP standards rules 1.4, 1.6, and advisory
4 opinions 33 and 34, and other uniform appraisal standards.

5 Mr. Groff is rendering opinions on professional
6 appraisal standards that he is not licensed or qualified
7 to interpret. Accordingly, Your Honor, these opinions
8 should be excluded from his report, Groff's section 5.1,
9 the assignment and property identification, that entire
10 section.

11 THE COURT: So it's just 5.1?

12 MR. STEIGLEDER: And let me just confirm, Your
13 Honor. 5.2 and 5.3.

14 MR. HALLER: May I respond?

15 THE COURT: You may.

16 And I want to make sure you're done, right? He
17 may respond now?

18 MR. STEIGLEDER: Okay. Give me one moment.

19 THE COURT: Okay.

20 MR. STEIGLEDER: 5.1. There's a section in 5.1.
21 That's it. It's just 5.1, Your Honor. I apologize.

22 THE COURT: Just 5.1.

23 MR. STEIGLEDER: 5.1.

24 THE COURT: Okay. Mr. Haller?

25 MR. HALLER: Yes. So as Petitioner's counsel



1 noted, SME valuation standards, which was cited by Mr.
2 Groff, use the term "valuation appraisal" synonymously.
3 And in fact, I believe I'm accurately representing, but we
4 can also just ask Mr. Groff. He's on the standards
5 committee. He's on the CRIRSCO equivalent. I believe
6 that the SME valuation guide, which we can bring up on the
7 screen, I can show you, incorporates principles of USPAP.
8 In fact, it says USPAP controls for U.S. mineral
9 properties.

10 So I don't think that what Petitioner's counsel
11 is representing is accurate at all. We've seen appraiser,
12 appraisal, valuation are synonymous in the valuations
13 guide. Those terms are used interchangeably. Mr. Stine's
14 reports says fair market mineral valuation or valuation of
15 the limestone resource and some resources is subset,
16 basically, a property right of one of those bundles of
17 sticks that Petitioner's counsel referenced yesterday,
18 that attend to the real property interest.

19 And so that's at the heart of what the parties
20 are disputing. Here, Mr. Groff is qualified as certified
21 minerals appraiser and from his experience on SME
22 committees and CRIRSCO committees to talk about standards.
23 Mr. Stine represented certain definitions of standards
24 were not applicable and aren't controlled by the industry,
25 but that's just not true.



1 Mining engineers have actually worked in the
2 industry both with private clients as well as public.
3 Even if they're maybe not reporting requirements the same
4 for public entities, mining engineers routinely rely on
5 these standards and in fact, don't go past -- don't ignore
6 the standards. You can also talk to that. We're actually
7 going to ask that the Court allow at a certain point
8 rebuttal of what Mr. Stine represented, although that's
9 beyond the focus of the debate right now.

10 All of what is described in here, I can have Mr.
11 Groff elaborate if you have any concerns. All of this,
12 he's competent to opine on -- analyze and opine on. It
13 goes to the heart of what Mr. Stine did. He made mineral
14 evaluation to which Mr. Groff is amply qualified.

15 MR. STEIGLEDER: Mr. Stine performed a mineral
16 evaluation. He did not provide or perform an appraisal
17 subject to USPAP standards.

18 MR. HALLER: Perhaps then we should just ask --

19 MR. STEIGLEDER: While we -- let me finish,
20 please. While the SME references are defers to potential
21 USPAP, it's very clear that it says within the United --
22 within the USA, state or Federal regulations or valuation
23 user expectations may require that a mineral property
24 valuation compliant with USPAP. It "may" require. But
25 then which the real property appraisal standards closely

1 align the valuation standards and things such as, for
2 example, highest and best use.

3 But Stine did not do that here. His report did
4 not mention USPAP, was not titled as such. It's not an
5 appraisal. It's a mineral valuation. Mr. Groff was not
6 qualified as a certified mineral appraiser, which would be
7 the only --

8 MR. HALLER: Yes, he was. He was just qualified
9 for that.

10 THE COURT: I don't want talking over each
11 other. I have a --

12 MR. STEIGLEDER: Well -- sorry. Go ahead.

13 THE COURT: I'm going to ask Mr. Stine -- I
14 mean, Mr. Groff -- a question about his report. If you
15 could turn to your rebuttal report, page 13, and I'm
16 looking at it. And I'm in the last two paragraphs, and
17 the paragraph that starts with mineral appraisal. If you
18 could go to the second to last sentence starting, "Second
19 evaluation or appraisal completed" --

20 THE WITNESS: Yes.

21 THE COURT: -- and then go to the full
22 paragraph. I read this as you were looking at an
23 appraisal, and I think you testified that that's not what
24 Mr. Stine did.

25 THE WITNESS: Yes. Mr. Stine, in his report,



1 states that he was tasked with finding the fair market
2 value of the mineral resource, which would be, as I've
3 always understood, a exercise of valuation or appraisal.
4 And anytime we use fair market value, it involves a
5 willing buyer and a willing seller, which almost always
6 enters into our appraisal standards or valuation
7 standards.

8 THE COURT: I am going to allow the section to
9 remain, but the Court might have some -- depending on what
10 is asked of the witness, might have some questions because
11 I find the section 5.1 a little confusing based on some of
12 your previous answers. So I'm not striking the section.

13 MR. STEIGLEDER: Okay. Your Honor, thank you.

14 THE COURT: Any and you had no other objections?

15 MR. STEIGLEDER: No other objections to Exhibit
16 9002-R.

17 THE COURT: R. Yes. And so 9002-R is now
18 admitted.

19 (Whereupon, the Document referred to as Exhibit
20 9002-R was received into evidence.)

21 MR. HALLER: Thank you, Your Honor. I believe
22 the parties discussed that we would want to hold over the
23 cross to tomorrow if that's agreeable?

24 THE COURT: That's agreeable with the Court.

25 MR. HALLER: There was a question about whether



1 the Court had had admitted 9001-R, but you have.

2 THE COURT: I have, yes. And I'll just do that
3 quickly. What I admitted today was 9005-R, 7298-P, 9001-
4 R, and 9002-R. Because I assumed it was -- this one,
5 7299, it was the impeachment, or that part wasn't being
6 offered. Did I have that wrong though?

7 MR. STEIGLEDER: We didn't offer into evidence,
8 Your Honor --

9 THE COURT: You didn't?

10 MR. STEIGLEDER: -- but we will now. It was
11 pre-marked. What was it? 7299?

12 MR. HALLER: Yeah.

13 THE COURT: Okay. So 7299-P is now admitted.

14 (Whereupon, the Document referred to as Exhibit
15 7299-P was received into evidence.)

16 THE COURT: All right. We'll go off the record
17 for a minute.

18 (Off the record 4:11 p.m. to 4:17 p.m.)

19 THE COURT: The Court is in recess until 9
20 o'clock tomorrow morning. Thank you.

21 (Whereupon, at 4:18 p.m., the above-entitled
22 matter was recessed until March 19, 2026.)

23

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25



1 CERTIFICATE OF TRANSCRIBER AND PROOFREADER

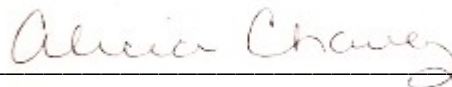
2 CASE NAME: Riddle Aggregates, LLC, Ornstein-Schuler,
3 LLC, Tax Matters Partner v. Commissioner
4 DOCKET NO.: 31104-21

5 We, the undersigned, do hereby certify that the
6 foregoing pages, numbers 527 through 761 inclusive, are
7 the true, accurate and complete transcript prepared from
8 the verbal recording made by electronic recording by
9 Sierra Self on March 16, 2026 before the United States Tax
10 Court at its session in Atlanta, GA, in accordance with
11 the applicable provisions of the current verbatim
12 reporting contract of the Court and have verified the
13 accuracy of the transcript by comparing the typewritten
14 transcript against the verbal recording.

15

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17



18

Alicia Chavez, CDLT-226

3/19/26

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Transcriber

Date

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21



22

Lori Busse, CET-4024

3/19/26

23

Proofreader

Date

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25

